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TITLE 48

INSURANCE

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Chapter 48.01 INITIAL PROVISIONS

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48.01.010 Short title. Chapters 48.01 to 48.36 RCW, and chapter 48.48 of this title constitute the insurance code. [1947 c 79 § .01.01; Rem. Supp. 1947 § 45.01.01.]

48.01.020 Scope of code. All insurance and insurance transactions in this state, or affecting subjects located wholly or in part or to be performed within this state, and all persons having to do therewith are governed by this code. [1947 c 79 § .01.02; Rem. Supp. 1947 § 45.01.02.]

48.01.030 Public interest. The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives rests the duty of preserving inviolate the integrity of insurance. [1947 c 79 § .01.03; Rem. Supp. 1947 § 45.01.03.]

48.01.040 "Insurance" defined. Insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies. [1947 c 79 § .01.04; Rem. Supp. 1947 § 45.01.04.]

48.01.050 "Insurer" defined. "Insurer" as used in this code includes every person engaged in the business of making contracts of insurance, other than a fraternal benefit society. A reciprocal or interinsurance exchange is an "insurer" as used in this code. [1947 c 79 § .01.05; Rem. Supp. 1947 § 45.01.05.]

48.01.060 "Insurance transaction" defined. "Insurance transaction" includes any:

- (1) Solicitation.
- (2) Negotiations preliminary to execution.
- (3) Execution of an insurance contract.
- (4) Transaction of matters subsequent to execution of the contract and arising out of it.
- (5) Insuring. [1947 c 79 § .01.06; Rem. Supp. 1947 § 45.01.06.]

48.01.070 "Person" defined. "Person" means any individual, company, insurer, association, organization, reciprocal or interinsurance exchange, partnership, business trust, or corporation. [1947 c 79 § .01.07; Rem. Supp. 1947 § 45.01.07.]

48.01.080 Penalties. Violation of any provision of this code is punishable by a fine of not less than ten dollars nor more than one thousand dollars, or by imprisonment for not more than one year, or both fine and imprisonment, in addition to any other penalty or forfeiture provided herein or otherwise by law. [1947 c 79 § .01.08; Rem. Supp. 1947 § 45.01.08.]

48.01.090 Severability—1947 c 79. If any provision of this code or the application thereof to any circumstance is held invalid, the remainder of the code, or the application of the provision to other circumstances, is not affected thereby. [1947 c 79 § .01.09; Rem. Supp. 1947 § 45.01.09.]

48.01.100 Existing officers. Continuation by this code of any office existing under any act repealed herein preserves the tenure of the individual holding the office at the effective date of this code. [1947 c 79 § .01.10; Rem. Supp. 1947 § 45.01.10.]

48.01.110 Existing licenses. Every license or certificate of authority in force immediately prior to the effective date of this code and existing under any act herein repealed is valid until its original expiration date, unless earlier terminated in accordance with this code. [1947 c 79 § .01.11; Rem. Supp. 1947 § 45.01.11.]

48.01.120 Existing insurance forms. Every form of insurance document in use at the effective date of this code in accordance with the commissioner's approval pursuant to any act herein repealed, may continue to be so used unless the commissioner otherwise prescribes in accordance with this code. [1947 c 79 § .01.12; Rem. Supp. 1947 § 45.01.12.]

48.01.130 Existing actions, violations. No action or proceeding commenced, and no violation of law existing, under any act herein repealed is affected by the repeal, but all procedure hereafter taken in reference thereto shall conform to this code as far as possible. [1947 c 79 § .01.13; Rem. Supp. 1947 § 45.01.13.]

48.01.140 Headings. The meaning or scope of any provision is not affected by chapter, section, or paragraph headings. [1947 c 79 § .01.14; Rem. Supp. 1947 § 45.01.14.]

48.01.150 Particular provisions prevail. Provisions of this code relating to a particular kind of insurance or a particular type of insurer or to a particular matter prevail over provisions relating to insurance in general or insurers in general or to such matter in general. [1947 c 79 § .01.15; Rem. Supp. 1947 § 45.01.15.]

48.01.160 Repealed acts not revived. Repeal by this code of any act shall not revive any law heretofore repealed or superseded. [1947 c 79 § .01.16; Rem. Supp. 1947 § 45.01.16.]

48.01.170 Effective date—1947 c 79. This code shall become effective on the first day of October, 1947. [1947 c 79 § .01.17; Rem. Supp. 1947 § 45.01.17.]

Chapter 48.02 INSURANCE COMMISSIONER

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State patrol retirement board, insurance commissioner as member: RCW 43.43.140.

Teachers retirement board, commissioner a member: RCW 41.32.040.

Voting machine committee, insurance commissioner as member: RCW 29.33.030.

48.02.010 Insurance commissioner. (1) There shall be an insurance commissioner of this state who shall be elected at the time and in the manner that other state officers are elected.

(2) The commissioner in office at the effective date of this code shall continue in office for the remainder of

the term for which he was elected and until his successor is duly elected and qualified.

(3) "Commissioner," where used in this code, means the insurance commissioner of this state. [1947 c 79 § .02.01; Rem. Supp. 1947 § 45.02.01.]

Commissioner ex officio state fire marshal: RCW 48.48.010.

48.02.020 Term of office. The term of office of the commissioner shall be four years, commencing on the Wednesday after the second Monday in January after his election. [1947 c 79 § .02.02; Rem. Supp. 1947 § 45.02.02.]

48.02.030 Bond. Before entering upon his duties the commissioner shall execute a bond to the state in the sum of twenty-five thousand dollars, to be approved by the state treasurer and the attorney general, conditioned upon the faithful performance of the duties of his office. [1947 c 79 § .02.03; Rem. Supp. 1947 § 45.02.03.]

48.02.050 Seal. The official seal of the commissioner shall be a vignette of George Washington, with the words "Insurance Commissioner, State of Washington" surrounding the vignette. [1947 c 79 § .02.05; Rem. Supp. 1947 § 45.02.05.]

48.02.060 General powers and duties. (1) The commissioner shall have the authority expressly conferred upon him by or reasonably implied from the provisions of this code.

(2) The commissioner shall execute his duties and shall enforce the provisions of this code.

(3) The commissioner may:

(a) Make reasonable rules and regulations for effectuating any provision of this code, except those relating to his election, qualifications, or compensation. No such rules and regulations shall be effective prior to their being filed for public inspection in the commissioner's office.

(b) Conduct investigations to determine whether any person has violated any provision of this code.

(c) Conduct examinations, investigations, hearings, in addition to those specifically provided for, useful and proper for the efficient administration of any provision of this code. [1947 c 79 § .02.06; Rem. Supp. 1947 § 45.02.06.]

48.02.080 Enforcement. (1) The commissioner may prosecute an action in any court of competent jurisdiction to enforce any order made by him pursuant to any provision of this code.

(2) If the commissioner has cause to believe that any person has violated any penal provision of this code or of other laws relating to insurance he shall certify the facts of the violation to the public prosecutor of the jurisdiction in which the offense was committed.

(3) If the commissioner has cause to believe that any person is violating or is about to violate any provision of this code or any regulation or order of the commissioner, he may:

(a) issue a cease and desist order; and/or

(b) bring an action in any court of competent jurisdiction to enjoin the person from continuing the violation or doing any action in furtherance thereof.

(4) The attorney general and the several prosecuting attorneys throughout the state shall prosecute or defend all proceedings brought pursuant to the provisions of this code when requested by the commissioner. [1967 c 150 § 1; 1947 c 79 § .02.08; Rem. Supp. 1947 § 45.02.08.]

48.02.090 Deputies—Employees. (1) The commissioner may appoint a chief deputy commissioner, who shall have power to perform any act or duty conferred upon the commissioner. The chief deputy commissioner shall take and subscribe the same oath of office as the commissioner, which oath shall be endorsed upon the certificate of his appointment and filed in the office of the secretary of state.

(2) The commissioner may appoint additional deputy commissioners for such purposes as he may designate.

(3) The commissioner shall be responsible for the official acts of his deputies, and may revoke at will the appointment of any deputy.

(4) The commissioner may employ examiners, and such actuarial, technical, and administrative assistants and clerks as he may need for proper discharge of his duties.

(5) The commissioner, or any deputy or employee of the commissioner, shall not be interested, directly or indirectly, in any insurer except as a policyholder; except, that as to such matters wherein a conflict of interests does not exist on the part of any such person, the commissioner may employ insurance actuaries or other technicians who are independently practicing their professions even though such persons are similarly employed by insurers.

(6) The commissioner may require any deputy or employee to be bonded as he shall deem proper but not to exceed in amount the sum of twenty-five thousand dollars. The cost of any such bond shall be borne by the state. [1949 c 190 § 1; 1947 c 79 § .02.09; Rem. Supp. 1949 § 45.02.09.]

48.02.100 Commissioner may delegate authority. Any power or duty vested in the commissioner by any provision of this code may be exercised or discharged by any deputy, assistant, examiner, or employee of the commissioner acting in his name and by his authority. [1947 c 79 § .02.10; Rem. Supp. 1947 § 45.02.10.]

48.02.110 Office. The commissioner shall have an office at the state capital, and may maintain such offices elsewhere in this state as he may deem necessary. [1947 c 79 § .02.11; Rem. Supp. 1947 § 45.02.11.]

48.02.120 Records. (1) The commissioner shall preserve in permanent form records of his proceedings, hearings, investigations, and examinations, and shall file such records in his office.

(2) The records of the commissioner and insurance filings in his office shall be open to public inspection, except as otherwise provided by this code.

(3) Five years after conclusion of transactions to which they relate, the commissioner may destroy any correspondence, claim files, working papers of examinations of insurers, reports of examination of insurers by insurance supervisory officials of other states, void or obsolete filings relating to rates, license applications, cards, and records, expired bonds, records of hearings, investigations, and any similar records, documents, or memoranda now or hereafter in his possession.

(4) Ten years after the year to which they relate, the commissioner may destroy any foreign or alien insurer's annual statements, valuation reports, tax reports, or similar records or reports now or hereafter in his possession.

(5) The commissioner shall concurrently execute and file in a separate, permanent office file a certificate listing and giving a summary description of the records, files, documents, memoranda, as they are destroyed. [1947 c 79 § .02.12; Rem. Supp. 1947 § 45.02.12.]

48.02.130 Certificates—Copies—Evidentiary effect. (1) Any certificate or license issued by the commissioner shall bear the seal of his office.

(2) Copies of records or documents in his office certified to by the commissioner shall be received as evidence in all courts in the same manner and to the same effect as if they were the originals.

(3) When required for evidence in court, the commissioner shall furnish his certificate as to the authority of an insurer or other licensee in this state on any particular date, and the court shall receive the certificate in lieu of the commissioner's testimony. [1947 c 79 § .02.13; Rem. Supp. 1947 § 45.02.13.]

48.02.140 Interstate cooperation. (1) The commissioner shall to the extent he deems useful for the proper discharge of his responsibilities under the provisions of this code:

(a) Consult and cooperate with the public officials having supervision over insurance in other states.

(b) Share jointly with other states in the employment of actuaries, statisticians, and other insurance technicians whose services or the products thereof are made available and are useful to the participating states and to the commissioner.

(c) Share jointly with other states in establishing and maintaining offices and clerical facilities for purposes useful to the participating states and to the commissioner.

(2) All arrangements made jointly with other states under items (b) and (c) of subsection (1) of this section shall be in writing executed on behalf of this state by the commissioner. Any such arrangement, as to participation of this state therein, shall be subject to termination by the commissioner at any time upon reasonable notice.

(3) For the purposes of this code "National Association of Insurance Commissioners" means that voluntary organization of the public officials having supervision of insurance in the respective states, districts, and territories of the United States, whatever other name such organization may hereafter adopt, and in the affairs of

which each of such public officials is entitled to participate subject to the constitution and bylaws of such organization. [1947 c 79 § .02.14; Rem. Supp. 1947 § 45.02.14.]

48.02.150 Supplies—"Convention blanks". The commissioner shall purchase at the expense of the state and in the manner provided by law:

(1) Printing, books, reports, furniture, equipment, and supplies as he deems necessary to the proper discharge of his duties under this code.

(2) "Convention form" insurers' annual statement blanks, which he may purchase from any printer manufacturing the forms for the various states. [1947 c 79 § .02.15; Rem. Supp. 1947 § 45.02.15.]

48.02.160 Special duties. The commissioner shall:

(1) Obtain and publish for the use of courts and appraisers throughout the state, tables showing the average expectancy of life and values of annuities and of life and term estates.

(2) Disseminate information concerning the insurance laws of this state. [1947 c 79 § .02.16; Rem. Supp. 1947 § 45.02.16.]

48.02.170 Annual report. The commissioner shall as early each year as accurate preparation enables, transmit to the legislature a report of his official transactions during the preceding calendar year, containing for the year reported:

(1) A list of all insurers authorized to transact insurance in this state, showing for each insurer its name, location, date of incorporation, date of admission into this state, capital funds, and kinds of insurance transacted.

(2) Tabulated abstracts of the annual statements of all authorized insurers as filed with the commissioner.

(3) A statement as to insurers whose authority to transact insurance in this state was terminated, the reasons for each termination, and if for insolvency the amount of the insurer's assets and liabilities as latest ascertained.

(4) A statement of his receipts and the sum of his expenditures.

(5) His recommendations for amendment of this code, and additional information and recommendations relative to insurance as he deems proper. [1947 c 79 § .02.17; Rem. Supp. 1947 § 45.02.17.]

48.02.180 Publication of insurance code and related statutes, manuals, etc.—Distribution—Sale. (1) In addition to such publications as are otherwise authorized under this code, the commissioner may from time to time prepare and publish:

(a) Booklets containing the insurance code, or supplements thereto, and such related statutes as the commissioner deems suitable and useful for inclusion in an appendix of such booklet or supplement.

(b) Manuals and other material relative to examinations for licensing as provided in chapter 48.17 RCW.

(2) The commissioner may furnish copies of the insurance code, supplements thereto, and related statutes

referred to in subdivision (a) above, free of charge to public offices and officers in this state concerned therewith, to public libraries in this state, to public officials of other states and jurisdictions, having supervision of insurance, to the library of congress, and to officers of the armed forces of the United States of America located at military installations in this state who are concerned with insurance transactions at or involving such military installations.

(3) Except as provided in subsection (2) above, the commissioner shall sell copies of the insurance code, supplements thereto, examination manuals and materials as referred to in subsection (1) above, at a reasonable price, fixed by the commissioner, in amount not less than the cost of publication, handling and distribution thereof. The commissioner shall promptly deposit all funds received by him pursuant to this subsection with the state treasurer to the credit of the general fund. [1959 c 225 § 1.]

Chapter 48.03 EXAMINATIONS

Sections

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| 48.03.070 | Witnesses—Subpoenas—Depositions—Oaths. |

48.03.010 Examination of insurers, bureaus. (1) The commissioner shall examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer as often as he deems advisable. He shall so examine each domestic insurer not less frequently than every three years. Examination of an alien insurer may be limited to its insurance transactions in the United States.

(2) As often as he deems advisable and at least once in five years, the commissioner shall fully examine each rating organization and examining bureau licensed in this state. As often as he deems it advisable he may examine each advisory organization and each joint underwriting or joint reinsurance group, association, or organization.

(3) The commissioner shall in like manner examine each insurer or rating organization applying for authority to do business in this state.

(4) In lieu of making his own examination, the commissioner may accept a full report of the last recent examination of a nondomestic insurer or rating or advisory organization, or joint underwriting or joint reinsurance group, association or organization, certified to by the insurance supervisory official of the state of domicile or of entry. [1947 c 79 § .03.01; Rem. Supp. 1947 § 45.03.01.]

48.03.020 Examination of agents, managers, promoters. For the purpose of ascertaining its condition, or compliance with this code, the commissioner may as

often as he deems advisable examine the accounts, records, documents, and transactions of:

- (1) Any insurance agent, solicitor, broker or adjuster.
- (2) Any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control a stock or mutual insurer.
- (3) Any person holding the shares of capital stock or policyholder proxies of a domestic insurer for the purpose of control of its management either as voting trustee or otherwise.
- (4) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer, or an insurance holding corporation, or a stock corporation to finance a domestic mutual insurer or the production of its business, or a corporation to be attorney in fact for a domestic reciprocal insurer. [1947 c 79 § .03.02; Rem. Supp. 1947 § 45.03.02.]

48.03.030 Access to records on examination—Correction of accounts. (1) Every person being examined, its officers, employees, and representatives shall produce and make freely accessible to the commissioner the accounts, records, documents, and files in his possession or control relating to the subject of the examination, and shall otherwise facilitate the examination.

(2) If the commissioner finds the accounts to be inadequate, or improperly kept or posted, he may employ experts to rewrite, post or balance them at the expense of the person being examined. [1947 c 79 § .03.03; Rem. Supp. 1947 § 45.03.03.]

48.03.040 Examination reports. (1) The commissioner shall make a full written report of each examination made by him containing only facts ascertained from the accounts, records, and documents examined and from the sworn testimony of individuals, and such conclusions and recommendations as may reasonably be warranted from such facts.

(2) The report shall be certified by the commissioner or by his examiner in charge of the examination, and shall be filed in the commissioner's office subject to subsection (3) of this section.

(3) The commissioner shall furnish a copy of the examination report to the person examined not less than ten days prior to the filing of the report for public inspection in the commissioner's office. If such person so requests in writing within such ten-day period, the commissioner shall hold a hearing to consider objections of such person to the report as proposed, and shall not so file the report until after such hearing and until after any modifications in the report deemed necessary by the commissioner have been made. [1965 ex.s. c 70 § 1; 1947 c 79 § .03.04; Rem. Supp. 1947 § 45.03.04.]

48.03.050 Reports withheld. The commissioner may withhold from public inspection any examination or investigation report for so long as he deems it advisable. [1947 c 79 § .03.05; Rem. Supp. 1947 § 45.03.05.]

48.03.060 Examination expense. (1) Examinations within this state of any insurer domiciled or having its home offices in this state, other than a title insurer,

made by the commissioner or his examiners and employees shall, except as to fees, mileage, and expense incurred as to witnesses, be at the expense of the state.

(2) Every other examination, whatsoever, or any part of the examination of any person domiciled or having its home offices in this state requiring travel and services outside this state, shall be made by the commissioner or by examiners designated by him and shall be at the expense of the person examined; but a domestic insurer shall not be liable for the compensation of examiners employed by the commissioner for such services outside this state.

(3) The person examined and liable therefor shall pay to the commissioner's examiners upon presentation of itemized statement thereof, their actual travel expenses, their reasonable living expense allowance, and their per diem compensation at a reasonable rate approved by the commissioner, incurred on account of the examination; except, that a domestic title insurer shall pay the examination expense and costs to the commissioner as itemized and billed by him.

The commissioner or his examiners shall not receive or accept any additional emolument on account of any examination. [1947 c 79 § .03.06; Rem. Supp. 1947 § 45.03.06.]

48.03.070 Witnesses—Subpoenas—Depositions—Oaths. (1) The commissioner may take depositions, may subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject of any hearing or investigation: *Provided*, That the provisions of RCW 34.04.105 shall apply in lieu of the provisions of this section as to subpoenas relative to hearings in rule-making and contested case proceedings.

(2) The subpoena shall be effective if served within the state of Washington and shall be served in the same manner as if issued from a court of record.

(3) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a court of record. Witness fees, mileage, and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the person as to whom the examination is being made, or by the person if other than the commissioner, at whose request the hearing is held.

(4) Enforcement of subpoenas shall be in accord with subsection (5) of RCW 34.04.105. [1967 c 237 § 15; 1963 c 195 § 1; 1949 c 190 § 2; 1947 c 79 § .03.07; Rem. Supp. 1949 § 45.03.07.]

Effective date—1967 c 237: The effective date of the 1967 amendment to this section is July 1, 1967, see RCW 34.04.921.

Saving—Construction—1967 c 237: See RCW 34.04.931.

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Chapter 48.04 HEARINGS AND APPEALS

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- 48.04.050 Show cause notice.
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- 48.04.070 Nonattendance, effect of.
- 48.04.140 Stay of action on appeal.

48.04.010 Hearings—Waiver. (1) The commissioner may hold a hearing for any purpose within the scope of this code as he may deem necessary. He shall hold a hearing

(a) if required by any provision of this code, or
 (b) upon written demand for a hearing made by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if such failure is deemed an act under any provision of this code, or by any report, promulgation, or order of the commissioner other than an order on a hearing of which such person was given actual notice or at which such person appeared as a party, or order pursuant to the order on such hearing.

(2) Any such demand for a hearing shall specify in what respects such person is so aggrieved and the grounds to be relied upon as basis for the relief to be demanded at the hearing.

(3) Unless a person aggrieved by a written order of the commissioner demands a hearing thereon within ninety days after receiving notice of such order, the right to such hearing shall conclusively be deemed to have been waived.

(4) The commissioner shall hold such hearing demanded within thirty days after his receipt of the demand, unless postponed by mutual consent. [1967 c 237 § 16; 1963 c 195 § 2; 1947 c 79 § .04.01; Rem. Supp. 1947 § 45.04.01.]

Effective date—1967 c 237: The effective date of the 1967 amendment to this section is July 1, 1967, see RCW 34.04.921.

Saving—Construction—1967 c 237: See RCW 34.04.931.

Severability—1967 c 237: See RCW 34.04.901.

48.04.020 Stay of action. (1) Such demand for a hearing received by the commissioner prior to the effective date of action taken or proposed to be taken by him shall stay such action pending the hearing, except as to action taken or proposed

(a) under an order on hearing, or
 (b) under an order pursuant to an order on hearing,
 or
 (c) under an order to make good an impairment of the assets of an insurer.

(2) In any case where an automatic stay is not provided for, and if the commissioner after written request therefor fails to grant a stay, the person aggrieved thereby may apply to the superior court for Thurston county for a stay of the commissioner's action. [1949 c 190 § 3; 1947 c 79 § .04.02; Rem. Supp. 1949 § 45.04.02.]

48.04.030 Place of hearing. The hearing shall be held at the place designated by the commissioner, and at his discretion it may be open to the public. [1947 c 79 § .04.03; Rem. Supp. 1947 § 45.04.03.]

48.04.050 Show cause notice. If any person is entitled to a hearing by any provision of this code before any proposed action is taken, the notice of the proposed

action may be in the form of a notice to show cause stating that the proposed action may be taken unless such person shows cause at a hearing to be held as specified in the notice, why the proposed action should not be taken, and stating the basis of the proposed action. [1947 c 79 § .04.05; Rem. Supp. 1947 § 45.04.05.]

48.04.060 Adjourned hearings. The commissioner may adjourn any hearing from time to time and from place to place without other notice of the adjourned hearing than announcement thereof at the hearing. [1947 c 79 § .04.06; Rem. Supp. 1947 § 45.04.06.]

48.04.070 Nonattendance, effect of. The validity of any hearing held in accordance with the notice thereof shall not be affected by failure of any person to attend or to remain in attendance. [1947 c 79 § .04.07; Rem. Supp. 1947 § 45.04.07.]

48.04.140 Stay of action on appeal. (1) The taking of an appeal shall not stay any action taken or proposed to be taken by the commissioner under the order appealed from unless a stay is granted by the court at a hearing held as part of the proceedings on appeal.

(2) A stay shall not be granted by the court in any case where the granting of a stay would tend to injure the public interest. In granting a stay, the court may require of the person taking the appeal such security or other conditions as it deems proper.

(3) If the order appealed from is one suspending, revoking, or refusing to renew an agent's, broker's, solicitor's or adjuster's license, the appellant by filing a bond with the clerk of the court, subject to approval of the court, in the sum of five hundred dollars, conditioned to pay all costs that may be awarded against him, may, if filed prior to the effective date of such order, supersede the order appealed from until the final determination of the appeal. [1947 c 79 § .04.14; Rem. Supp. 1947 § 45.04.14.]

Chapter 48.05

INSURERS—GENERAL REQUIREMENTS

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48.05.010 "Domestic", "foreign", "alien" insurers defined. (1) A "domestic" insurer is one formed under the laws of this state.

(2) A "foreign" insurer is one formed under the laws of the United States, of a state or territory of the United States other than this state, or of the District of Columbia.

(3) An "alien" insurer is one formed under the laws of a nation other than the United States.

(4) For the purposes of this code, "United States," when used to signify place, means only the states of the United States, the government of Puerto Rico and the District of Columbia. [1961 c 194 § 1; 1947 c 79 § .05.01; Rem. Supp. 1947 § 45.05.01.]

48.05.030 Certificate of authority required. (1) No person shall act as an insurer and no insurer shall transact insurance in this state other than as authorized by a certificate of authority issued to it by the commissioner and then in force; except, as to such transactions as are expressly otherwise provided for in this code.

(2) Every certificate of authority shall specify the name of the insurer, the location of its principal office, the name and location of the principal office of its attorney in fact if a reciprocal insurer, and the kind or

kinds of insurance it is authorized to transact in this state.

(3) The investigation and adjustment of any claim in this state arising under an insurance contract issued by an unauthorized insurer, shall not be deemed to constitute the transacting of insurance in this state. [1947 c 79 § .05.03; Rem. Supp. 1947 § 45.05.03.]

48.05.040 Certificate of authority—Qualifications. To qualify for and hold a certificate of authority an insurer must:

(1) Be a stock, mutual, or reciprocal insurer of the same general type as may be formed as a domestic insurer under the provisions of chapter 48.06 RCW of this code, but this requirement shall not apply as to domestic mutual property insurers which, as of January 1, 1957, were lawfully transacting insurance on the assessment plan; and

(2) Have capital funds as required by this code, based upon the type and domicile of the insurer and the kinds of insurance proposed to be transacted; and

(3) Transact or propose to transact in this state insurances authorized by its charter, and only such insurance as meets the standards and requirements of this code; and

(4) Fully comply with, and qualify according to, the other provisions of this code. [1957 c 193 § 1; 1947 c 79 § .05.04; Rem. Supp. 1947 § 45.05.04.]

48.05.045 Certificate of authority not to be issued to governmentally owned insurer. No certificate of authority shall be issued to or exist with respect to any insurer which is owned and controlled, in whole or in substantial part, by any government or governmental agency. [1957 c 193 § 2.]

48.05.050 "Charter" defined. "Charter" means articles of incorporation, articles of agreement, articles of association of a corporation, or other basic constituent document of a corporation, or subscribers' agreement and attorney in fact agreement of a reciprocal insurer. [1947 c 79 § .05.05; Rem. Supp. 1947 § 45.05.05.]

48.05.060 "Capital funds" defined. "Capital funds" means the excess of the assets of an insurer over its liabilities. Capital stock, if any, shall not be deemed to be a liability for the purposes of this section. [1947 c 79 § .05.06; Rem. Supp. 1947 § 45.05.06.]

48.05.070 Application for certificate of authority. To apply for an original certificate of authority an insurer shall:

(1) File with the commissioner its request therefor showing:

(a) Its name, home office location, type of insurer, organization date, and state or country of its domicile.

(b) The kinds of insurance it proposes to transact.

(c) Additional information as the commissioner may reasonably require.

(2) File with the commissioner:

(a) A copy of its charter as amended, certified, if a foreign or alien insurer, by the proper public officer of the state or country of domicile.

(b) A copy of its bylaws, certified by its proper officer.

(c) A statement of its financial condition, management, and affairs on a form satisfactory to or furnished by the commissioner.

(d) If a foreign or alien insurer, or a domestic reciprocal insurer, an appointment of the commissioner as its attorney to receive service of legal process.

(e) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its proper officer.

(f) If a foreign or alien insurer, a certificate from the proper public official of its state or country of domicile showing that it is duly organized and is authorized to transact the kinds of insurance proposed to be transacted.

(g) If a domestic reciprocal insurer, the declaration required by RCW 48.10.090 of this code.

(h) Other documents or stipulations as the commissioner may reasonably require to evidence compliance with the provisions of this code.

(3) Deposit with the commissioner the fees required by this code to be paid for filing the accompanying documents, and for the certificate of authority, if granted. [1947 c 79 § .05.07; Rem. Supp. 1947 § 45.05.07.]

48.05.080 Foreign insurers—Deposit. (1) Prior to the issuance of a certificate of authority to a foreign insurer, it shall make a deposit of assets with the commissioner for the protection of all its policyholders, or of all of its policyholders and obligees or its policyholders and obligees within the United States, in amount and kind, subject to RCW 48.14.040, the same as is required of a like domestic insurer transacting like kinds of insurance.

(2) In lieu of such deposit or part thereof the commissioner may accept the certificate of the public official having supervision over insurers in any other state to the effect that a like deposit by such insurer or like part thereof in equal or greater amount is held in public custody in such state. [1955 c 86 § 1; 1947 c 79 § .05.08; Rem. Supp. 1947 § 45.05.08.]

Effective date—1955 c 86: "This act shall become effective on January 1, 1956." [1955 c 86 § 18.]

Supervision of transfers—1955 c 86: "All transfers authorized under this act shall be made under the supervision of the state auditor." [1955 c 86 § 19.]

The foregoing annotations apply to RCW 48.05.080, 48.06.110, 48.16.010 through 48.16.080, 48.16.110, 48.16.120, 48.29.020, 48.29.030, 48.29.070, 48.29.080, 48.29.090 and 48.29.110.

48.05.090 Alien insurers—Assets required—Trust deposit. (1) An alien insurer shall not be authorized to transact insurance in this state unless it maintains within the United States assets in amount not less than its outstanding liabilities arising out of its insurance transactions in the United States, nor unless it maintains a trust deposit in an amount not less than the required reserves under its policies resulting from such

transactions (after deducting, in the case of a life insurer, the amount of outstanding policy loans on such policies) plus assets equal to the larger of the following sums:

(a) The largest amount of deposit required under this title to be made in this state by any type of domestic insurer transacting like kinds of insurance; or

(b) Two hundred thousand dollars.

(2) The trust deposit shall be for the security of all policyholders or policyholders and obligees of the insurer in the United States. It shall not be subject to diminution below the amount currently determined in accordance with subsection (1) of this section so long as the insurer has outstanding any liabilities arising out of its business transacted in the United States.

(3) The trust deposit shall be maintained with public depositaries or trust institutions within the United States approved by the commissioner. [1949 c 190 § 4; 1947 c 79 § .05.09; Rem. Supp. 1949 § 45.05.09.]

48.05.100 Alien insurers—Deposit resolution. An alien insurer shall file with the commissioner a certified copy of the resolution of its governing board by which the trust deposit was established, together with a certified copy of any trust agreement under which the deposit is held. [1947 c 79 § .05.10; Rem. Supp. 1947 § 45.05.10.]

48.05.105 Foreign or alien insurers—Three years active transacting required—Exception. No certificate of authority shall be granted to a foreign or alien applicant that has not actively transacted for three years the classes of insurance for which it seeks to be admitted; except, the foregoing shall not apply to any subsidiary of a seasoned, reputable insurer that has held a certificate of authority in this state for at least three years. [1967 c 150 § 2.]

48.05.110 Issuance of certificate of authority. If the commissioner finds that an insurer has met the requirements for and is fully entitled thereto under this code, he shall issue to it a proper certificate of authority. If the commissioner does not so find, the authority shall be refused within a reasonable length of time following completion by the insurer of the application therefor. [1947 c 79 § .05.11; Rem. Supp. 1947 § 45.05.11.]

48.05.120 Certificate of authority—Duration, renewal, amendment. (1) All certificates of authority shall continue in force until suspended, revoked, or not renewed. A certificate shall be subject to renewal annually on the first day of July upon application of the insurer and payment of the fee therefor. If not so renewed, the certificate shall expire as of the thirtieth day of June next preceding.

(2) The commissioner may amend a certificate of authority at any time in accordance with changes in the insurer's charter or insuring powers. [1957 c 193 § 3; 1955 c 31 § 1; 1947 c 79 § .05.12; Rem. Supp. 1947 § 45.05.12.]

48.05.130 Certificate of authority—Mandatory refusal, revocation, suspension. The commissioner shall refuse to renew or shall revoke or suspend an insurer's certificate of authority, in addition to other grounds therefor in this code, if the insurer:

(1) Is a foreign or alien insurer and no longer qualifies or meets the requirements for the authority; or, is a domestic mutual or domestic reciprocal insurer, and fails to make good a deficiency of assets as required by the commissioner.

(2) Is a domestic stock insurer and has assets less in amount than its liabilities, including its capital stock as a liability, and has failed to make good such deficiency as required by the commissioner.

(3) Knowingly exceeds its charter powers or its certificate of authority. [1947 c 79 § .05.13; Rem. Supp. 1947 § 45.05.13.]

48.05.140 Certificate of authority—Discretionary refusal, revocation, suspension. The commissioner may refuse, suspend, or revoke an insurer's certificate of authority, in addition to other grounds therefor in this code, if the insurer:

(1) Fails to comply with any provision of this code other than those for violation of which refusal, suspension, or revocation is mandatory, or fails to comply with any proper order or regulation of the commissioner.

(2) Is found by the commissioner to be in such condition that its further transaction of insurance in this state would be hazardous to policyholders and the people in this state.

(3) Refuses to remove or discharge a director or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude.

(4) Usually compels claimants under policies either to accept less than the amount due them or to bring suit against it to secure full payment of the amount due.

(5) Is affiliated with and under the same general management, or interlocking directorate, or ownership as another insurer which transacts insurance in this state without having a certificate of authority therefor, except as is permitted by this code.

(6) Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(7) Fails to pay any final judgment rendered against it in this state upon any policy, bond, recognizance, or undertaking issued or guaranteed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later.

(8) Is found by the commissioner, after investigation or upon receipt of reliable information, to be managed by persons, whether by its directors, officers, or by any other means, who are incompetent or untrustworthy or so lacking in insurance company managerial experience

as to make a proposed operation hazardous to the insurance-buying public; or that there is good reason to believe it is affiliated directly or indirectly through ownership, control, reinsurance or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance.

(9) Does business through agents or brokers in this state or in any other state who are not properly licensed under applicable laws and duly enacted regulations adopted pursuant thereto. [1973 1st ex.s. c 152 § 1; 1969 ex.s. c 241 § 3; 1967 c 150 § 4; 1947 c 79 § .05.14; Rem. Supp. 1947 § 45.04.14.]

Severability—1973 1st ex.s. c 152: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 152 § 7.]

48.05.150 Notice of intention to refuse, revoke, or suspend. The commissioner shall give an insurer notice of his intention to suspend, revoke, or refuse to renew its certificate of authority not less than ten days before the order of suspension, revocation or refusal is to become effective; except that no advance notice of intention is required where the order results from a domestic insurer's failure to make good a deficiency of assets as required by the commissioner. [1947 c 79 § .05.15; Rem. Supp. 1947 § 45.05.15.]

48.05.160 Period of suspension. The commissioner shall not suspend an insurer's certificate of authority for a period in excess of one year, and he shall state in his order of suspension the period during which it shall be effective. [1947 c 79 § .05.16; Rem. Supp. 1947 § 45.05.16.]

48.05.170 Reauthorization, limitation upon. No insurer whose certificate of authority has been suspended, revoked, or refused shall subsequently be authorized unless the grounds for such suspension, revocation, or refusal no longer exist and the insurer is otherwise fully qualified. [1947 c 79 § .05.17; Rem. Supp. 1947 § 45.05.17.]

48.05.180 Notice of refusal, revocation, suspension—Effect upon agents' authority. Upon the suspension, revocation or refusal of an insurer's certificate of authority, the commissioner shall give notice thereof to the insurer and shall likewise suspend, revoke or refuse the authority of its agents to represent it in this state and give notice thereof to the agents. [1947 c 79 § .05.18; Rem. Supp. 1947 § 45.05.18.]

48.05.185 Fine in addition or in lieu of suspension, revocation or refusal. After hearing and in addition to or in lieu of the suspension, revocation or refusal to renew any certificate of authority the commissioner may levy a fine upon the insurer in an amount not less than two hundred fifty dollars and not more than one thousand dollars. The order levying such fine shall specify the

period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the commissioner shall revoke the certificate of authority of the insurer if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1965 ex.s. c 70 § 3.]

48.05.190 Name of insurer. (1) Every insurer shall conduct its business in its own legal name.

(2) No insurer shall assume or use a name deceptively similar to that of any other authorized insurer. [1947 c 79 § .05.19; Rem. Supp. 1947 § 45.05.19.]

48.05.200 Commissioner as attorney for service of process. (1) Each authorized foreign or alien insurer shall appoint the commissioner as its attorney to receive service of, and upon whom shall be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute service upon the insurer. Service of legal process against such insurer can be had only by service upon the commissioner.

(2) With the appointment the insurer shall designate by name and address the person to whom the commissioner shall forward legal process so served upon him. The insurer may change such person by filing a new designation.

(3) The appointment of the commissioner as attorney shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in this state any contract made by the insurer or liabilities or duties arising therefrom. [1947 c 79 § .05.20; Rem. Supp. 1947 § 45.05.20.]

48.05.210 Service of process—Procedure. (1) Duplicate copies of legal process against an insurer for whom the commissioner is attorney shall be served upon him either by a person competent to serve a summons, or by registered mail. At the time of service the plaintiff shall pay to the commissioner two dollars, taxable as costs in the action.

(2) The commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the person designated for the purpose by the insurer in its most recent such designation filed with the commissioner.

(3) The commissioner shall keep a record of the day and hour of service upon him of all legal process. No proceedings shall be had against the insurer, and the insurer shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner. [1947 c 79 § .05.21; Rem. Supp. 1947 § 45.05.21.]

48.05.215 Unauthorized foreign or alien insurers—Jurisdiction of state courts—Service of process—

Procedure. (1) Any foreign or alien insurer not thereunto authorized by the commissioner, whether it be a surplus lines insurer operating under chapter 48.15 RCW or not, who, by mail or otherwise, solicits insurance business in this state or transacts insurance business in this state as defined by RCW 48.01.060, thereby submits itself to the jurisdiction of the courts of this state in any action, suit or proceeding instituted by or on behalf of an insured, beneficiary or the commissioner arising out of such unauthorized solicitation of insurance business, including, but not limited to, an action for injunctive relief by the commissioner.

(2) In any such action, suit or proceeding instituted by or on behalf of an insured or beneficiary, service of legal process against such unauthorized foreign or alien insurer may be made by service of duplicate copies of legal process on the commissioner by a person competent to serve a summons or by registered mail. At the time of service the plaintiff shall pay to the commissioner two dollars, taxable as costs in the action. The commissioner shall forthwith mail one of the copies of the process, by registered mail with return receipt requested, to the defendant at its last known principal place of business. The defendant insurer shall have forty days from the date of the service on the commissioner within which to plead, answer or otherwise defend the action.

(3) In any such action, suit or proceeding by the commissioner, service of legal process against such unauthorized foreign or alien insurer may be made by personal service of legal process upon any officer of such insurer at its last known principal place of business outside the state of Washington. The summons upon such unauthorized foreign or alien insurer shall contain the same requisites and be served in like manner as personal summons within the state of Washington; except, the insurer shall have forty days from the date of such personal service within which to plead, answer or otherwise defend the action. [1967 c 150 § 3.]

48.05.220 Venue of actions against insurer. Suit upon causes of action arising within this state against an insurer upon an insurance contract shall be brought in the county where the cause of action arose. [1947 c 79 § .05.22; Rem. Supp. 1947 § 45.05.22.]

48.05.230 Countersignature of policies. (1) No insurer shall issue an insurance contract covering a subject of insurance resident, located, or to be performed in this state unless the insurance contract or countersignature endorsement is countersigned by its licensed agent, or manager or general agent, resident in this state, except as provided in RCW 48.05.240. The commissioner may suspend or revoke the certificate of authority of any insurer violating this provision.

(2) An agent, general agent, or manager shall not sign or countersign any insurance contract or countersignature endorsement in blank. The commissioner may suspend or revoke the license of any agent or general agent violating this provision.

(3) If pursuant to the laws of any other state or country a fee or charge is required to be made by a resident insurance agent of such state or country for countersigning policies of insurance written on risks in such state or country by nonresident licensees of such state or country, no resident of this state shall countersign a policy of insurance on like risks in this state written by a nonresident licensee resident in such state or country unless a fee or charge in the same amount as is provided under the laws of such other state or country is collected.

(4) Such violations shall not invalidate any insurance contract. [1965 ex.s. c 70 § 2; 1947 c 79 § .05.23; Rem. Supp. 1947 § 45.05.23.]

48.05.240 Exceptions to countersignature requirement. The provisions of RCW 48.05.230 shall not apply to reinsurance contracts between insurers, to life or disability insurances, to bid bonds issued in connection with any public or private contract, or to insurance contracts:

(1) Issued as a surplus line under RCW 48.15.040, or exempted under RCW 48.15.160.

(2) Covering the rolling stock, vessels, or aircraft of any common carrier in interstate or foreign commerce, or any vehicle principally garaged and used in another state, or covering any liability or other risks incident to the ownership, maintenance, or operation thereof.

(3) Covering any property in course of transportation interstate or in foreign trade, or any liability or risk incident thereto.

(4) Issued by insurers not using agents in the general solicitation of business. [1961 c 194 § 2; 1947 c 79 § .05.24; Rem. Supp. 1947 § 45.05.24.]

48.05.250 Annual statement. (1) Each authorized insurer shall annually, before the first day of March, file with the commissioner a true statement of its financial condition, transactions, and affairs as at the thirty-first day of December preceding. The statement shall be on forms and shall contain information as required by this code and by the commissioner, and shall be verified by the oaths of at least two of the insurer's principal officers.

(2) The commissioner shall annually during November and December furnish each such insurer duplicate copies of annual statement forms as next required to be filed. The statement forms shall be in general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner.

(3) The annual statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. The

statement shall be verified by the insurer's United States manager or by its officers duly authorized.

(4) The commissioner shall suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due or during any extension of time therefor which the commissioner, for good cause, may grant. [1947 c 79 § .05.25; Rem. Supp. 1947 § 45.05.25.]

Advertising of financial condition: RCW 48.30.070.

Assets and liabilities: Chapter 48.12 RCW.

False financial statements: RCW 48.30.030.

48.05.270 Alien insurer—Capital funds, determination. (1) The capital funds of an alien insurer shall be deemed to be the amount by which its assets, deposited and otherwise held as provided in RCW 48.05.090 exceed its liabilities with respect to its business transacted in the United States.

(2) Assets of such insurer held in any state for the special protection of policyholders and obligees in such state shall not constitute assets of the insurer for the purposes of this code. Liabilities of the insurer so secured by such assets, but not exceeding the amount of such assets, may be deducted in computing the insurer's liabilities for the purpose of this section. [1947 c 79 § .05.27; Rem. Supp. 1947 § 45.05.27.]

48.05.280 Records and accounts of insurers. Every insurer shall keep full and adequate accounts and records of its assets, obligations, transactions, and affairs. [1947 c 79 § .05.28; Rem. Supp. 1947 § 45.05.28.]

48.05.290 Withdrawal of insurer—Reinsurance. (1) No insurer shall withdraw from this state until its direct liability to its policyholders and obligees under all its insurance contracts then in force in this state has been assumed by another authorized insurer under an agreement approved by the commissioner. In the case of a life insurer, its liability pursuant to contracts issued in this state in settlement of proceeds under its policies shall likewise be so assumed.

(2) The commissioner may waive this requirement if he finds upon examination that a withdrawing insurer is then fully solvent and that the protection to be given its policyholders in this state will not be impaired by the waiver.

(3) The assuming insurer shall within a reasonable time replace the assumed insurance contracts with its own, or by endorsement thereon acknowledge its liability thereunder. [1947 c 79 § .05.29; Rem. Supp. 1947 § 45.05.29.]

48.05.300 Alien reinsurers—Limitations. No credit shall be allowed to any insurer, as an asset or as a deduction from liability for reinsurance ceded to an alien insurer, other than under a contract of ocean marine insurance, covering a subject of insurance resident, located, or to be performed in this state unless the alien insurer:

(1) Is authorized to transact insurance in a state of the United States, and

(2) Maintains an adequate guaranty deposit in a state of the United States for the protection of its insurance obligees in the United States, or

(3) Has an attorney in fact resident in the United States upon whom service of legal process may be made. [1947 c 79 § .05.30; Rem. Supp. 1947 § 45.05.30.]

48.05.310 General agents, managers—Appointment—Powers—Licensing. (1) An insurer appointing any person as its general agent or manager to represent it as such in this state shall file notice of the appointment with the commissioner on forms prescribed and furnished by the commissioner.

(2) Any such general agent or manager shall have such authority, consistent with this code, as may be conferred by the insurer. A general agent resident in this state and licensed, as in this section provided, may exercise the powers conferred by this code upon agents licensed for the kinds of insurance which the general agent is authorized to transact for the insurer so appointing him.

(3) The appointment of a resident general agent shall not be effective unless the person so appointed is licensed as the general agent of such insurer by the commissioner upon application and payment of the fee therefor as provided in RCW 48.14.010.

(4) Every such license shall expire as at close of business on the thirty-first day of March next following the date of issue, and may be renewed for an additional year upon application and payment of the fee therefor.

(5) The commissioner may deny, suspend, or revoke any such license for any cause specified in RCW 48.17-.530 and in the manner provided in RCW 48.17.540. [1947 c 79 § .05.31; Rem. Supp. 1947 § 45.05.31.]

48.05.320 Reports of fire losses. (1) Each authorized insurer shall promptly report to the commissioner, upon forms as prescribed and furnished by him, each fire loss of property in this state reported to it and of undetermined or suspected criminal origin.

(2) As may be requested by the commissioner, each such insurer shall likewise report to him upon claims paid by it for loss or damage by fire in this state. [1947 c 79 § .05.32; Rem. Supp. 1947 § 45.05.32.]

48.05.330 Insurers—Combination of kinds of insurance authorized—Exceptions. An insurer which otherwise qualifies therefor may be authorized to transact any one kind or combinations of kinds of insurance as defined in chapter 48.11 RCW, except:

(1) A life insurer may grant annuities and may be authorized to transact in addition only disability insurance; except, that the commissioner may, if the insurer otherwise qualifies therefor, continue so to authorize any life insurer which immediately prior to June 13, 1963 was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability insurances and annuity business.

(2) A reciprocal insurer shall not transact life insurance.

(3) A title insurer shall be a stock insurer and shall not transact any other kind of insurance. This provision

shall not prohibit the ceding of reinsurance by a title insurer to insurers other than mutual or reciprocal insurers. [1963 c 195 § 6.]

48.05.340 Capital and surplus requirements. (1) Subject to RCW 48.05.350 and 48.05.360 to qualify for authority to transact any one kind of insurance as defined in chapter 48.11 RCW or combination of kinds of insurance as shown below, a foreign or alien insurer, whether stock, mutual, or a reciprocal or a domestic stock insurer hereafter formed shall possess and thereafter maintain unimpaired paid-in capital stock, if a stock insurer, or unimpaired basic surplus if a foreign mutual insurer or foreign reciprocal insurer, and shall possess when first so authorized additional funds in surplus as follows:

| Kind or kinds of insurance | Paid-in capital stock or basic surplus | Additional surplus |
|--|--|--------------------|
| Life | \$400,000 | \$400,000 |
| Disability | 400,000 | 400,000 |
| Life and disability | 500,000 | 500,000 |
| Property | 400,000 | 400,000 |
| Marine & transportation | 450,000 | 450,000 |
| General casualty | 500,000 | 500,000 |
| Vehicle | 400,000 | 400,000 |
| Surety | 500,000 | 500,000 |
| Any two of the following kinds of insurance: Property, marine & transportation, general casualty, vehicle, surety, disability | 550,000 | 550,000 |
| Multiple lines (all insurances except life and title insurance) | 650,000 | 650,000 |
| Title (in accordance with the provisions of chapter 48.29 RCW) | | |

(2) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer wherever it may operate or propose to operate, whether or not only a portion of such kinds are to be transacted in this state.

(3) An insurer holding a certificate of authority to transact insurance in this state immediately prior to June 8, 1967 may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such authority and thereafter maintains unimpaired the amount of paid-in capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, and special surplus as required of it under laws in force immediately prior to such effective date; and any proposed domestic insurer which is in process of formation or financing under a solicitation permit which is outstanding immediately prior to June 8, 1967 shall, if otherwise qualified therefor, be authorized to transact any kind or kinds of insurance upon the basis of the capital and surplus requirements of such an insurer under the laws in force immediately prior to such effective date.

(4) As to surplus required for qualification to transact one or more kinds of insurance and thereafter to be maintained, domestic mutual insurers are governed by chapter 48.09 RCW, and reciprocal insurers are governed by chapter 48.10 RCW. [1967 c 150 § 5; 1963 c 195 § 7.]

48.05.350 General casualty insurer combining disability, fidelity, insurance. An insurer authorized to transact general casualty insurance shall be authorized to transact disability insurance and fidelity insurance without requiring additional financial qualifications. [1963 c 195 § 8.]

48.05.360 Special surplus requirements for certain combinations. An insurer shall not be authorized to transact any one of the following insurances,—vehicle, or general casualty, or marine and transportation, or surety,—with any additional kind of insurance unless it maintains at all times special surplus of not less than one hundred thousand dollars in addition to the paid-in capital stock if a stock insurer or basic surplus if a mutual or reciprocal insurer otherwise required. This section does not apply to combinations transacted by a general casualty insurer pursuant to RCW 48.05.350. [1963 c 195 § 9.]

48.05.370 Fiduciary relationship to insured of officers, directors or corporation holding controlling interest. Officers and directors of an insurer or a corporation holding a controlling interest in an insurer shall be deemed to stand in a fiduciary relation to the insurer, and shall discharge the duties of their respective positions in good faith, and with that diligence, care and skill which ordinary prudent men would exercise under similar circumstances in like positions. [1969 ex.s. c 241 § 1.]

Chapter 48.06

ORGANIZATION OF DOMESTIC INSURERS

Sections

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| 48.06.190 | Penalty for exhibiting false accounts, etc. |
| 48.06.200 | Incorporation—Articles of—Contents. |

Fraternal benefit societies: Chapter 48.36 RCW.

48.06.010 Types of domestic insurers permitted. An insurer formed in this state shall be either

- (1) An incorporated stock insurer, or
- (2) An incorporated mutual insurer, or
- (3) An incorporated specific risks mutual property insurer, or
- (4) An incorporated mutual assessment property insurer only, or
- (5) An incorporated farm mutual assessment property insurer only, or
- (6) A reciprocal insurer, with respective powers, duties, and restrictions as provided in this code. [1947 c 79 § .06.01; Rem. Supp. 1947 § 45.06.01.]

48.06.020 Assessment mutuals prohibited—Exceptions. No insurer shall be formed or be authorized in this state to issue contracts of insurance the performance of which is contingent upon the payment of assessments, assessment premiums, or calls made upon its members. Mutual assessment property insurers and farm mutual assessment property insurers shall be the only exception to this provision. [1947 c 79 § .06.02; Rem. Supp. 1947 § 45.06.02.]

48.06.030 Solicitation permit. (1) No person forming or proposing to form in this state an insurer, or insurance holding corporation, or stock corporation to finance an insurer or insurance production therefor, or corporation to manage an insurer, or corporation to be attorney in fact for a reciprocal insurer, or a syndicate for any of such purposes, shall advertise, or solicit or receive any funds, agreement, stock subscription, or membership on account thereof unless he has applied for and has received from the commissioner a solicitation permit.

(2) Any person violating this section shall be subject to a fine of not more than ten thousand dollars or imprisonment for not more than ten years, or by both fine and imprisonment. [1947 c 79 § .06.03; Rem. Supp. 1947 § 45.06.03.]

48.06.040 Application for solicitation permit. To apply for a solicitation permit the person shall:

(1) File with the commissioner a request therefor showing,

(a) name, type, and purpose of insurer, corporation or syndicate proposed to be formed;

(b) names, addresses, fingerprints, and business records of each person associated or to be associated in the formation of the proposed insurer, corporation, or syndicate;

(c) full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the proposed insurer, corporation, or syndicate, or the formation thereof;

(d) the plan according to which solicitations are to be made;

(e) such additional information as the commissioner may reasonably require.

(2) File with the commissioner,

(a) original and copies in triplicate of proposed articles of incorporation, or syndicate agreement; or, if the

proposed insurer is a reciprocal, original and duplicate of the proposed subscribers' agreement and attorney in fact agreement;

(b) original and duplicate copy of any proposed bylaws;

(c) copy of any security proposed to be issued and copy of application or subscription agreement therefor;

(d) copy of any insurance contract proposed to be offered and copy of application therefor;

(e) copy of any prospectus, advertising, or literature proposed to be used;

(f) copy of proposed form of any escrow agreement required.

(3) Deposit with the commissioner the fees required by law to be paid for the application, for filing of the articles of incorporation of an insurer, for filing the subscribers' agreement and attorney in fact agreement if the proposed insurer is a reciprocal, for the solicitation permit, if granted, and for filing articles of incorporation with the secretary of state. [1967 c 150 § 6; 1947 c 79 § .06.04; Rem. Supp. 1947 § 45.06.04.]

48.06.050 Procedure upon application. The commissioner shall expeditiously examine the application for a solicitation permit and make any investigation relative thereto deemed necessary. If the commissioner finds that

(1) the application is complete; and

(2) the documents therewith filed are equitable in terms and proper in form; and

(3) the management of the company, whether by its directors, officers, or by any other means is competent and trustworthy and not so lacking in managerial experience as to make a proposed operation hazardous to the insurance-buying public; and that there is no reason to believe the company is affiliated, directly or indirectly, through ownership, control, reinsurance, or other insurance or business relations, with any other person or persons whose business operations are or have been marked, to the detriment of the policyholders or stockholders or investors or creditors or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance; and

(4) the agreements made or proposed are equitable to present and future shareholders, subscribers, members or policyholders, he shall give notice to the applicant that he will issue a solicitation permit, stating the terms to be contained therein, upon the filing of the bond required by RCW 48.06.110 of this code.

If the commissioner does not so find, he shall give notice to the applicant that the permit will not be granted, stating the grounds therefor, and shall refund to the applicant all sums so deposited except the application fee. [1967 c 150 § 7; 1947 c 79 § .06.05; Rem. Supp. 1947 § 45.06.05.]

48.06.060 Issuance of permit—Bond. Upon the filing of the bond required by RCW 48.06.110 after notice by the commissioner, the commissioner shall

(1) file the articles of incorporation of the proposed incorporated insurer or other corporation with the secretary of state, and

(2) issue to the applicant a solicitation permit. [1947 c 79 § .06.06; Rem. Supp. 1947 § 45.06.06.]

48.06.070 Duration of permit—Contents. Every solicitation permit issued by the commissioner shall:

(1) Be for a period of not over two years, subject to the right of the commissioner to grant a reasonable extension for good cause.

(2) State the securities for which subscriptions are to be solicited, the number, classes, par value, and selling price thereof, or identify the insurance contract for which applications and advance premiums or deposits are to be solicited.

(3) Limit the portion of funds received on account of stock or syndicate subscriptions, if any are proposed to be taken, which may be used for promotion and organization expenses to such amount as he deems adequate, but in no event to exceed fifteen percent of such funds as and when actually received.

(4) If to be a mutual or reciprocal insurer, limit the portion of funds received on account of applications for insurance which may be used for promotion or organization expenses to a reasonable commission upon such funds, giving consideration to the kind of insurance and policy involved and to the costs incurred by insurers generally in the production of similar business, and provide that no such commission shall be deemed to be earned nor be paid until the insurer has received its certificate of authority and the policies applied for and upon which such commission is to be based, have been actually issued and delivered.

(5) Contain such other information required by this chapter or reasonable conditions relative to accounting and reports or otherwise as the commissioner deems necessary. [1953 c 197 § 1; 1947 c 79 § .06.07; Rem. Supp. 1947 § 45.06.07.]

48.06.080 Permit as inducement. The granting of a solicitation permit is permissive only and shall not constitute an endorsement by the commissioner of any person or thing related to the proposed insurer, corporation, or syndicate and the existence of the permit shall not be advertised or used as an inducement in any solicitation. The substance of this section in bold faced type not less than ten point shall be printed at the top of each solicitation permit. [1947 c 79 § .06.08; Rem. Supp. 1947 § 45.06.08.]

48.06.090 Solicitors' licenses. Solicitation for sale of securities to members of the public under a solicitation permit shall be made only by individuals licensed therefor pursuant to the provisions of the securities act. [1949 c 190 § 5; 1947 c 79 § .06.09; Rem. Supp. 1949 § 45.06.09.]

48.06.100 Modification, revocation of permit. (1) The commissioner may, for cause, modify a solicitation permit, or may, after a hearing, revoke any solicitation permit for violation of any provision of this code, or of the terms of the permit, or of any proper order of the commissioner, or for misrepresentation.

(2) The commissioner shall revoke a solicitation permit if requested in writing by a majority of the syndicate members, or by a majority of the incorporators and two-thirds of the subscribers to stock or applicants for insurance in the proposed incorporated insurer or corporation, or if he is so requested by a majority of the subscribers of a proposed reciprocal insurer. [1947 c 79 § .06.10; Rem. Supp. 1947 § 45.06.10.]

48.06.110 Bond—Cash deposit. (1) The commissioner shall not issue a solicitation permit until the person applying therefor files with him a corporate surety bond in the penalty of fifty thousand dollars, in favor of the state and for the use and benefit of the state and of subscribers and creditors of the proposed organization.

The bond shall be conditioned upon the payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the proposed organization before completion of organization or in event a certificate of authority is not granted; and upon a full accounting for funds received until the proposed insurer has been granted its certificate of authority, or until the proposed corporation or syndicate has completed its organization as defined in the solicitation permit.

(2) In lieu of filing such bond, the person may deposit with the commissioner fifty thousand dollars in cash or in United States government bonds at par value, to be held in trust upon the same conditions as required for the bond.

(3) The commissioner may waive the requirement for a bond or deposit in lieu thereof if the permit provides that:

(a) The proposed securities are to be distributed solely and finally to those few persons who are the active promoters intimate to the formation of the insurer, or other corporation or syndicate, or

(b) The securities are to be issued in connection with subsequent financing as provided in RCW 48.06.180.

(4) Any bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement or termination of all liabilities against it. [1969 ex.s. c 241 § 2; 1955 c 86 § 2; 1953 c 197 § 2; 1947 c 79 § .06.11; Rem. Supp. 1947 § 45.06.11.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.06.120 Escrow of funds. (1) All funds received pursuant to a solicitation permit shall be deposited and held in escrow in a bank or trust company under an agreement approved by the commissioner. No part of any such deposit shall be withdrawn, except:

(a) For the payment of promotion and organization expenses as authorized by the solicitation permit; or

(b) for the purpose of making any deposit with the commissioner required for the issuance of a certificate of authority to an insurer; or

(c) if the proposed organization is not to be an insurer, upon completion of payments on stock or syndicate subscriptions made under the solicitation permit and

deposit or appropriation of such funds to the purposes specified in the solicitation permit; or

(d) for making of refunds as provided in RCW 48.06.170.

(2) When the commissioner has issued a certificate of authority to an insurer any such funds remaining in escrow for its account shall be released to the insurer. [1947 c 79 § .06.12; Rem. Supp. 1947 § 45.06.12.]

48.06.130 Liability of organizers—Organization expense. (1) The incorporators of any insurer or other corporation, or the persons proposing to form a reciprocal insurer, or a syndicate, shall be jointly and severally liable for its debts or liabilities until it has secured a certificate of authority, if an insurer, or has completed its organization if a corporation other than an insurer or a syndicate.

(2) Any portion of funds received on account of stock or syndicate subscriptions which is allowed therefor under the solicitation permit, may be applied concurrently toward the payment of promotion and organization expense theretofore incurred. [1947 c 79 § .06.13; Rem. Supp. 1947 § 45.06.13.]

48.06.150 Payment for subscriptions—Forfeiture.

(1) No such proposed stock insurer, corporation, or syndicate shall issue any share of stock or participation agreement except for payment in cash or in securities eligible for investment of funds of insurers. No such shares or agreement shall be issued until all subscriptions received under the solicitation permit have been so fully paid, nor, if an insurer, until a certificate of authority has been issued to it.

(2) Every subscription contract to shares of a stock insurer or other corporation calling for payment in installments, together with all amounts paid thereon may be forfeited at the option of the corporation, upon failure to make good a delinquency in any installment upon not less than forty-five days' notice in writing, and every such contract shall so provide. [1947 c 79 § .06.15; Rem. Supp. 1947 § 45.06.15.]

48.06.160 Insurance applications—Mutual and reciprocal insurers. All applications for insurance obtained in forming a mutual or reciprocal insurer shall provide that:

(1) Issuance of the policy is contingent upon completion of organization of the insurer and issuance to it of a certificate of authority; and

(2) the prepaid premium or deposit will be refunded in full to the applicant if the organization is not completed and certificate of authority issued prior to the solicitation permit's date of expiration; and

(3) the agreement for insurance is not effective until a policy has been issued under it. [1947 c 79 § .06.16; Rem. Supp. 1947 § 45.06.16.]

48.06.170 Procedure on failure to complete organization or to qualify. The commissioner shall withdraw all funds held in escrow and refund to subscribers or applicants all sums paid in on stock or syndicate subscriptions, less that part of such sums paid in on

subscriptions as has been allowed and used for promotion and organization expenses, and all sums paid in on insurance applications, and shall dissolve the proposed insurer, corporation or syndicate if

(1) the proposed insurer, corporation or syndicate fails to complete its organization and obtain full payment for subscriptions and applications, and, if an insurer, it fails to secure its certificate of authority, all before expiration of the solicitation permit; or

(2) the commissioner revokes the solicitation permit. [1947 c 79 § .06.17; Rem. Supp. 1947 § 45.06.17.]

48.06.180 Subsequent financing. (1) No domestic insurer, or insurance holding corporation, or stock corporation for financing operations of a mutual insurer, or attorney in fact corporation of a reciprocal insurer, after

(a) it has received a certificate of authority, if an insurer, or

(b) it has completed its initial organization and financing if a corporation other than an insurer, shall solicit or receive funds in exchange for any new issue of its corporate securities, other than through a stock dividend, until it has applied to the commissioner for, and has been granted, a solicitation permit.

(2) The commissioner shall issue such a permit unless he finds that:

(a) The funds proposed to be secured are excessive in amount for the purpose intended, or

(b) the proposed securities or the manner of their distribution are inequitable, or

(c) the issuance of the securities would jeopardize the interests of policyholders or the holders of other securities of the insurer or corporation.

(3) Any such solicitation permit granted by the commissioner shall be for such duration, and shall contain such terms and be issued upon such conditions as the commissioner may reasonably specify or require. [1949 c 190 § 6; 1947 c 79 § .06.18; Rem. Supp. 1949 § 45.06.18.]

48.06.190 Penalty for exhibiting false accounts, etc. Every person who, with intent to deceive, knowingly exhibits any false account, or document, or advertisement, relative to the affairs of any insurer, or of any corporation or syndicate of the kind enumerated in RCW 48.06.030, formed or proposed to be formed, shall be guilty of a felony. [1947 c 79 § .06.19; Rem. Supp. 1947 § 45.06.19.]

48.06.200 Incorporation—Articles of—Contents.

(1) This section applies to insurers incorporated in this state, but no insurer heretofore lawfully incorporated in this state is required to reincorporate or change its articles of incorporation by reason of any provisions of this section.

(2) The incorporators shall be individuals who are United States citizens, of whom two-thirds shall be residents of this state. The number of incorporators shall be not less than five if a stock insurer, nor less than ten if a mutual insurer.

(3) The incorporators shall execute articles of incorporation in quadruplicate and acknowledge their signatures thereunto before an officer authorized to take acknowledgments of deeds.

(4) After approval of the articles by the commissioner, one copy shall be filed in the office of the secretary of state, another in the office of the commissioner, another in the office of the county auditor of the county in which the insurer's principal offices are to be located, and the fourth copy shall be retained by the insurer.

(5) The articles of incorporation shall state:

First: The names and addresses of the incorporators.

Second: The name of the insurer. If a mutual insurer the name shall include the word "mutual."

Third: (a) The objects for which the insurer is formed;

(b) whether it is a stock or mutual insurer, and if a mutual property insurer only, whether it will insure on the cash premium or assessment plan;

(c) the kinds of insurance it will issue, according to the designations made in this code.

Fourth: If a stock insurer, the amount of its capital, the aggregate number of shares, and the par value of each share, which par value shall be not less than ten dollars, except that after the corporation has transacted business as an authorized insurer in the state for five years or more, its articles of incorporation may be amended, at the option of its stockholders, to provide for a par value of not less than one dollar per share. If a mutual insurer, the maximum contingent liability of its policyholders for the payment of its expenses and losses occurring under its policies.

Fifth: The duration of its existence, which may be perpetual.

Sixth: The names and addresses of the directors, not less than five in number, who shall constitute the board of directors of the insurer for the initial term, not less than two nor more than six months, as designated in the articles of incorporation.

Seventh: The name of the city or town of this state in which the insurer's principal place of business is to be located.

Eighth: Other provisions not inconsistent with law as may be deemed proper by the incorporators. [1963 c 60 § 1; 1949 c 190 § 7; 1947 c 79 § .06.20; Rem. Supp. 1949 § 45.06.20.]

**Chapter 48.07
DOMESTIC INSURERS—POWERS**

| | |
|-----------|--|
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- 48.07.160 Continuing operation in event of national emergency—Declaration of purpose—"Insurer" defined.
- 48.07.170 Continuing operation in event of national emergency—Emergency bylaws.
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Business corporations: Title 23A RCW.

Dissolution and winding up business corporation: Chapter 23A.28 RCW.

Interlocking ownership, management: RCW 48.30.250.

Merger or consolidation: RCW 48.31.010.

Organization of domestic insurers: Chapter 48.06 RCW.

48.07.010 Application of code to existing insurers. Existing authorized domestic insurers shall continue to insure only in accordance with the provisions of this code. [1947 c 79 § .07.01; Rem. Supp. 1947 § 45.07.01.]

48.07.020 Principal office. Every domestic insurer shall establish and maintain in this state its principal office and place of business. [1947 c 79 § .07.02; Rem. Supp. 1947 § 45.07.02.]

48.07.030 Application of general corporation laws. The laws of this state relating to private corporations, except where inconsistent with the express provisions of this code, shall govern the corporate powers, duties, and relationships of incorporated domestic insurers. [1947 c 79 § .07.03; Rem. Supp. 1947 § 45.07.03.]

Provisions as to general business corporations: Title 23A RCW.

48.07.040 Annual meeting. Each incorporated domestic insurer shall, in the month of January, or February, or March, or April, hold the annual meeting of its shareholders or members for the purpose of receiving reports of its affairs and to elect directors. [1965 ex.s. c 70 § 4; 1947 c 79 § .07.04; Rem. Supp. 1947 § 45.07.04.]

48.07.050 Directors—Qualifications. Not less than three-fourths of the directors of an incorporated domestic insurer shall be United States citizens, and a majority of the board of directors of a mutual life insurer shall be residents of this state. [1957 c 193 § 21; 1947 c 79 § .07.05; Rem. Supp. 1947 § 45.07.05.]

48.07.060 Corrupt practices—Penalty. No person shall buy or sell or barter a vote or proxy, relative to any meeting of shareholders or members of an incorporated domestic insurer, or engage in any corrupt or dishonest practice in or relative to the conduct of any such meeting. Violation of this section shall constitute a gross misdemeanor. [1947 c 79 § .07.06; Rem. Supp. 1947 § 45.07.06.]

48.07.070 Amendment of articles of incorporation. (1) Amendments to the articles of incorporation of a domestic insurer shall be made by a majority vote of its board of directors and the vote or written assent of two-thirds of its voting capital stock, or two-thirds of

the members (if a mutual insurer) voting at a valid meeting of members.

(2) The president and secretary of the insurer shall, under the corporate seal, certify the amendment in quadruplicate, and file it in the offices of the secretary of state, the commissioner, the county auditor, and the insurer, as required under this code for original articles of incorporation. Thereupon, subject to the requirements of RCW 48.08.010 relative to increase of capital stock of a stock insurer, the amendment shall become effective. [1947 c 79 § .07.07; Rem. Supp. 1947 § 45.07.07.]

48.07.080 Guarantee of officers' obligations prohibited. No domestic insurer or its affiliates or subsidiaries shall guarantee the financial obligation of any director or officer of such insurer or affiliate or subsidiary in his personal capacity, and any such guaranty attempted shall be void.

This prohibition shall not apply to obligations of the insurer under surety bonds or insurance contracts issued in the regular course of business. [1947 c 79 § .07.08; Rem. Supp. 1947 § 45.07.08.]

48.07.090 Management and exclusive agency contracts. (1) No incorporated domestic insurer shall make any contract whereby any person is granted or is to enjoy in fact the control and management, or the controlling or preemptive right to produce substantially all insurance business for the insurer, unless such contract is filed with and approved by the commissioner. The contract shall be deemed approved unless disapproved by the commissioner within thirty days after date of filing. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

(2) The commissioner shall not approve any contract referred to in subsection (1) which:

(a) Subjects the insurer to excessive charges for expenses or commissions; or

(b) does not contain fair and adequate standards of performance; or

(c) is to extend for an unreasonable length of time; or

(d) contains other inequitable provisions or provisions which may jeopardize the security of policyholders. [1953 c 197 § 3; 1947 c 79 § .07.09; Rem. Supp. 1947 § 45.07.09.]

48.07.100 Vouchers for expenditures. (1) No domestic insurer shall make any disbursement of twenty-five dollars or more, unless evidenced by a voucher correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.

(2) If the disbursement is for services and reimbursement, the voucher shall describe the services and itemize the expenditures.

(3) If the disbursement is in connection with any matter pending before any legislature or public body or before any public official, the voucher shall also correctly describe the nature of the matter and of the insurer's interest therein. [1947 c 79 § .07.10; Rem. Supp. 1947 § 45.07.10.]

48.07.110 Depositories. The funds of a domestic insurer shall not be deposited in any bank or banking institution which has not first been approved as a depository by the insurer's board of directors or by a committee thereof designated for the purpose. [1947 c 79 § .07.11; Rem. Supp. 1947 § 45.07.11.]

48.07.130 Pecuniary interest of director, restrictions upon. (1) No person having any authority in the investment or disposition of the funds of a domestic insurer shall accept, except for the insurer, or be the beneficiary of any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the insurer, or be pecuniarily interested therein in any capacity; except, that such a person may procure a loan from the insurer direct upon approval by two-thirds of its directors and upon the pledge of securities eligible for the investment of the insurer's funds under this code.

(2) This section does not prohibit a life insurer from making a policy loan to such person on a life insurance contract issued by it and in accordance with the terms thereof.

(3) The commissioner may, by regulations from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, or to a corporation or firm in which the director is interested, for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director or such corporation or firm. [1947 c 79 § .07.13; Rem. Supp. 1947 § 45.07.13.]

48.07.140 Compliance with foreign laws. Any domestic insurer doing business in another state, territory or sovereignty may design and issue insurance contracts and transact insurance in such state, territory or sovereignty as required or permitted by the laws thereof, any provision of the insurer's articles of incorporation or bylaws notwithstanding. [1947 c 79 § .07.14; Rem. Supp. 1947 § 45.07.14.]

48.07.150 Solicitations in other states. (1) No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which it is not then licensed as an authorized insurer.

(2) This section shall not prohibit advertising through publications and radio broadcasts originating outside such reciprocating state, if the insurer is licensed in a majority of the states in which such advertising is disseminated, and if such advertising is not specifically directed to residents of such reciprocating state.

(3) This section shall not prohibit insurance, covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed. Nor shall it prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocating state.

(4) A "reciprocating" state, as used herein, is one under the laws of which a similar prohibition is imposed upon and is enforced against insurers domiciled in that state.

(5) The commissioner shall suspend or revoke the certificate of authority of a domestic insurer found by him, after a hearing, to have violated this section. [1947 c 79 § .07.15; Rem. Supp. 1947 § 45.07.15.]

48.07.160 Continuing operation in event of national emergency—Declaration of purpose—"Insurer" defined. It is desirable for the general welfare and in particular for the welfare of insurance beneficiaries, policyholders, claimants and others that the business of domestic insurers be continued notwithstanding the event of a national emergency. The purpose of this section and RCW 48.07.170 through 48.07.200 is to facilitate the continued operation of domestic insurers in the event that a national emergency is caused by an attack on the United States which is so disruptive of normal business and commerce in this state as to make it impossible or impracticable for a domestic insurer to conduct its business in accord with applicable provisions of law, its bylaws, or its charter. When used in this section and RCW 48.07.170 through 48.07.200 the word "insurer" includes a fraternal benefit society. [1963 c 195 § 25.]

48.07.170 Continuing operation in event of national emergency—Emergency bylaws. The board of directors of any domestic insurer may at any time adopt emergency bylaws, subject to repeal or change by action of those having power to adopt regular bylaws for such insurer, which shall be operative during such a national emergency and which may, notwithstanding any different provisions of the regular bylaws, or of the applicable statutes, or of such insurer's charter, make any provision that may be reasonably necessary for the operation of such insurer during the period of such emergency. [1963 c 195 § 26.]

48.07.180 Continuing operation in event of national emergency—Directors. In the event that the board of directors of a domestic insurer has not adopted emergency bylaws, the following provisions shall become effective upon the occurrence of such a national emergency as above described:

(1) Three directors shall constitute a quorum for the transaction of business at all meetings of the board.

(2) Any vacancy in the board may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director.

(3) If there are no surviving directors, but at least three vice-presidents of such insurer survive, the three vice-presidents with the longest term of service shall be the directors and shall possess all of the powers of the previous board of directors and such powers as are granted herein or by subsequently enacted legislation. By majority vote, such emergency board of directors may elect other directors. If there are not at least three surviving vice-presidents, the commissioner or duly

designated person exercising the powers of the commissioner shall appoint three persons as directors who shall include any surviving vice-presidents and who shall possess all of the powers of the previous board of directors and such powers as are granted herein or by subsequently enacted legislation, and these persons by majority vote may elect other directors. [1963 c 195 § 27.]

48.07.190 Continuing operation in event of national emergency—Officers. At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a national emergency and in the event of the death or incapacity of the president, the secretary, or the treasurer of such insurer, such officers, or any of them, shall be succeeded in the office by the person named or described in a succession list adopted by the board of directors. Such list may be on the basis of named persons or position titles, shall establish the order of priority and may prescribe the conditions under which the powers of the office shall be exercised. [1963 c 195 § 28.]

48.07.200 Continuing operation in event of national emergency—Principal office and place of business. At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a national emergency the principal office and place of business of such insurer shall be at such location as is named or described in the resolution. Such resolution may provide for alternate locations and establish an order of preference. [1963 c 195 § 29.]

Chapter 48.08 DOMESTIC STOCK INSURERS

| | |
|-----------|--|
| Sections | |
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Organization of domestic insurers: Chapter 48.06 RCW.

Regulation of acquisition of control of domestic insurers: Chapter 48.31A RCW.

Superadded liability of shareholders of domestic stock insurance companies: State Constitution Art. 12 § 11.

48.08.010 Increase of capital stock. (1) Increase of the capital stock of a domestic stock insurer shall be by amendment to its articles of incorporation.

(2) If the increased capital stock is to be distributed as a stock dividend, such increased capital stock may be fully paid in out of any available surplus funds as is provided in RCW 48.08.030, and such payment shall be effected by a transfer on the insurer's books from its surplus account to its capital account.

(3) When the increased capital has been fully paid in, a certificate to such effect shall be made in quadruplicate under oath and the corporate seal by the insurer's president and secretary and filed in the public offices named in RCW 48.07.070. [1953 c 197 § 4; 1947 c 79 § .08.01; Rem. Supp. 1947 § 45.08.01.]

48.08.020 Reduction of capital stock. (1) Reduction of the capital stock of a domestic stock insurer shall be by amendment of its articles of incorporation. No such reduction shall be made which results in capital stock less in amount than the minimum required by this code for the kinds of insurance thereafter to be transacted by the insurer.

(2) No surplus funds of the insurer resulting from a reduction of its capital stock shall be distributed to stockholders, except as a stock dividend on a subsequent increase of capital stock, or upon dissolution of the insurer, or upon approval of the commissioner of a distribution upon proof satisfactory to him that the distribution will not impair the interests of policyholders or the insurer's solvency.

(3) Upon such reduction of capital stock, the insurer's directors shall call in any outstanding stock certificates required to be changed pursuant thereto, and issue proper certificates in their stead. [1947 c 79 § .08.02; Rem. Supp. 1947 § 45.08.02.]

48.08.030 Dividends to stockholders. (1) No domestic stock insurer shall pay any cash dividend to stockholders except out of that part of its available surplus funds which is derived from any realized net profits on its business.

(2) Such an insurer may pay a stock dividend out of any available surplus funds.

(3) Payment of any dividend to stockholders of a domestic stock insurer shall also be subject to all the limitations and requirements governing the payment of dividends by other private corporations.

(4) No dividend shall be declared or paid which would reduce the insurer's surplus to an amount less than the minimum required for the kinds of insurance thereafter to be transacted.

(5) For the purposes of this chapter "surplus funds" means the excess of the insurer's assets over its liabilities, including its capital stock as a liability.

(6) Available surplus means the excess over the minimum amount of surplus required for the kinds of insurance the insurer is authorized to transact. [1947 c 79 § .08.03; Rem. Supp. 1947 § 45.08.03.]

48.08.040 Illegal dividends, reductions—Penalty against directors. Any director of a domestic stock insurer who votes for or concurs in the declaration or payment of any dividend to stockholders or a reduction of capital stock not authorized by law shall, in addition to any other liability imposed by law, be guilty of a gross misdemeanor. [1947 c 79 § .08.04; Rem. Supp. 1947 § 45.08.04.]

48.08.050 Impairment of capital. (1) If the capital stock of a domestic stock insurer becomes impaired, the commissioner shall at once determine the amount of the deficiency and serve notice upon the insurer to require its stockholders to make good the deficiency within ninety days after service of such notice.

(2) The deficiency shall be made good in cash, or in assets eligible under this code for the investment of the insurer's funds, or by reduction of the insurer's capital stock to an amount not below the minimum required for the kinds of insurance to be thereafter transacted.

(3) If the deficiency is not made good and proof thereof filed with the commissioner within such ninety-day period, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(4) If the deficiency is not made good the insurer shall not issue or deliver any policy after the expiration of such ninety-day period. Any officer or director who violates or knowingly permits the violation of this provision shall be subject to a fine of from fifty dollars to one thousand dollars for each violation. [1947 c 79 § .08.05; Rem. Supp. 1947 § 45.08.05.]

48.08.060 Repayment of contributions to surplus. Contributions to the surplus of a domestic stock insurer other than resulting from sale of its capital stock, shall not be subject to repayment except out of surplus in excess of the minimum surplus initially required of such an insurer transacting like kinds of insurance. [1947 c 79 § .08.06; Rem. Supp. 1947 § 45.08.06.]

48.08.070 Participating policies. (1) Any domestic stock insurer may, if its charter so provides, issue policies entitled to participate from time to time in the earnings of the insurer through dividends.

(2) Any classification of its participating policies and of risks assumed thereunder which the insurer may make shall be reasonable. No dividend shall be paid which is inequitable or which unfairly discriminates as between such classifications or as between policies within the same classification.

(3) No such insurer shall issue in this state both participating and nonparticipating policies for the same class of risks; except, that both participating and nonparticipating life insurance policies may be issued if the right or absence of the right to participate is reasonably related to the premium charged.

(4) Dividends to participating life insurance policies issued by such insurer shall be paid only out of its surplus funds as defined in subsection (5) of RCW 48.08-.030. Dividends to participating policies for other kinds of insurance shall be paid only out of that part of such

surplus funds which is derived from any realized net profits from the insurer's business.

(5) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on any policy. [1947 c 79 § .08.07; Rem. Supp. 1947 § 45.08.07.]

48.08.080 Mutualization of stock insurers. (1) Any domestic stock insurer may become a domestic mutual insurer pursuant to such plan and procedure as are approved by the commissioner in advance of such mutualization.

(2) The commissioner shall not approve any such plan, procedure, or mutualization unless:

(a) It is equitable to both shareholders and policyholders.

(b) It is approved by vote of the holders of not less than three-fourths of the insurer's capital stock having voting rights, and by vote of not less than two-thirds of the insurer's policyholders who vote on such plan, pursuant to such notice and procedure as may be approved by the commissioner. Such vote may be registered in person, by proxy, or by mail.

(c) If a life insurer, the right to vote thereon is limited to those policyholders whose policies have face amounts of not less than one thousand dollars and have been in force one year or more.

(d) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair value thereof as determined by competent disinterested appraisers.

(e) The plan provides for appraisal and purchase of the shares of any nonconsenting stockholder in accordance with the laws of this state relating to the sale or exchange of all the assets of a private corporation.

(f) The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective.

(g) The mutualization leaves the insurer with surplus funds reasonably adequate to preserve the security of its policyholders and its ability to continue successfully in business in the states in which it is then authorized, and in the kinds of insurance it is then authorized to transact. [1947 c 79 § .08.08; Rem. Supp. 1947 § 45.08.08.]

48.08.090 Stockholder meetings—Duty to inform stockholders of matters to be presented—Proxies. (1) This section shall apply to all domestic stock insurers except:

(a) A domestic stock insurer having less than one hundred stockholders; except, that if ninety-five percent or more of the insurer's stock is owned or controlled by a parent or affiliated insurer, this section shall not apply to such insurer unless its remaining shares are held by five hundred or more stockholders.

(b) Domestic stock insurers which file with the Securities and Exchange Commission forms of proxies, consents and authorizations pursuant to the Securities and Exchange Act of 1934, as amended.

(2) Every such insurer shall seasonably furnish its stockholders in advance of stockholder meetings, information in writing reasonably adequate to inform them

relative to all matters to be presented by the insurer's management for consideration of stockholders at such meeting.

(3) No person shall solicit a proxy, consent, or authorization in respect of any stock of such an insurer unless he furnishes the person so solicited with written information reasonably adequate as to

(a) the material matters in regard to which the powers so solicited are proposed to be used, and

(b) the person or persons on whose behalf the solicitation is made, and the interest of such person or persons in relation to such matters.

(4) No person shall so furnish to another, information which the informer knows or has reason to believe, is false or misleading as to any material fact, or which fails to state any material fact reasonably necessary to prevent any other statement made from being misleading.

(5) The form of all such proxies shall:

(a) Conspicuously state on whose behalf the proxy is solicited;

(b) Provide for dating the proxy;

(c) Impartially identify each matter or group of related matters intended to be acted upon;

(d) Provide means for the principal to instruct the vote of his shares as to approval or disapproval of each matter or group, other than election to office; and

(e) Be legibly printed, with context suitably organized.

Except, that a proxy may confer discretionary authority as to matters as to which choice is not specified pursuant to item (d), above, if the form conspicuously states how it is intended to vote the proxy or authorization in each such case; and may confer discretionary authority as to other matters which may come before the meeting but unknown for a reasonable time prior to the solicitation by the persons on whose behalf the solicitation is made.

(6) No proxy shall confer authority (a) to vote for election of any person to any office for which a bona fide nominee is not named in the proxy statement, or (b) to vote at any annual meeting (or adjournment thereof) other than the annual meeting next following the date on which the proxy statement and form were furnished stockholders.

(7) The commissioner shall have authority to make and promulgate reasonable rules and regulations for the effectuation of this section, and in so doing shall give due consideration to rules and regulations promulgated for similar purposes by the insurance supervisory officials of other states. [1965 ex.s. c 70 § 5.]

Exemption from federal registration: 15 U.S.C.A. § 78 1(g), (2), (G).

48.08.100 Equity security—Defined. The term "equity security" when used in RCW 48.08.100 through 48.08.160 means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and

regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security. [1965 ex.s. c 70 § 11.]

48.08.110 Equity security—Duty to file statement of ownership. Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurer, or who is a director or an officer of such insurer, shall file with the commissioner on or before the 30th day of September, 1965, or within ten days after he becomes such beneficial owner, director or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such insurer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month. [1965 ex.s. c 70 § 6.]

48.08.120 Equity security—Profits from short term transactions—Remedies—Limitation of actions. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such insurer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such insurer within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the insurer, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the insurer, or by the owner of any security of the insurer in the name and in behalf of the insurer if the insurer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter: *Provided*, That no such suit shall be brought more than two years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section. [1965 ex.s. c 70 § 7.]

Exemption from federal registration: 15 U.S.C.A. § 78 1(g), (2), (G).

48.08.130 Equity security—Sales, unlawful practices. It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such insurer if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security, does not deliver it

against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation: *Provided*, That no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense. [1965 ex.s. c 70 § 8.]

48.08.140 Equity security—Exemptions—Sales by dealer. The provisions of RCW 48.08.120 shall not apply to any purchase and sale, or sale and purchase, and the provisions of RCW 48.08.130 shall not apply to any sale of an equity security of a domestic stock insurer not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market. [1965 ex.s. c 70 § 9.]

48.08.150 Equity security—Exemptions—Foreign or domestic arbitrage transactions. The provisions of RCW 48.08.110, 48.08.120 and 48.08.130 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of RCW 48.08.100 through 48.08.160. [1965 ex.s. c 70 § 10.]

48.08.160 Equity security—Exemptions—Securities registered or required to be, or no class held by one hundred or more persons. The provisions of RCW 48.08.110, 48.08.120, and 48.08.130 shall not apply to equity securities of a domestic stock insurer if (1) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if (2) such domestic stock insurer shall not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the insurer would be subject to the provisions of RCW 48.08.110, 48.08.120, and 48.08.130 except for the provisions of this subsection (2). [1965 ex.s. c 70 § 12.]

48.08.170 Equity security—Rules and regulations. The commissioner shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him by RCW 48.08.100 through 48.08.160, and may for such purpose classify domestic stock insurers, securities, and other persons or matters within his jurisdiction. No provision of RCW 48.08.110, 48.08.120, and 48.08.130 imposing

any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [1965 ex.s. c 70 § 13.]

48.08.190 Failure to file required information, documents or reports—Forfeiture. Any person who fails to file information, documents, or reports required to be filed under *this 1969 amendatory act or any rule or regulation thereunder shall forfeit to the state of Washington the sum of one hundred dollars for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under this title, shall be payable to the treasurer of the state of Washington and shall be recoverable in a civil suit in the name of the state of Washington. [1969 ex.s. c 241 § 18.]

*Reviser's note: "this 1969 amendatory act" [1969 ex.s. c 241] is codified as RCW 48.05.140, 48.05.370, 48.06.110, 48.08.190, 48.13.110, 48.13.120, 48.13.125, 48.13.160, 48.14.010, 48.14.020, 48.15.090, 48.17-.530, 48.20.052, 48.31.190, 48.34.020, 48.34.100, 48.36.150, 48.48.020 and 48.18.291–48.18.297.

Chapter 48.09 MUTUAL INSURERS

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Dividends not to be guaranteed: RCW 48.30.100.

Fraternal mutual life insurers: RCW 48.36.420.

Fraternal mutual property insurers: RCW 48.36.410.

Merger or consolidation: RCW 48.31.010.

Mutual benefit associations: Chapter 24.16 RCW.

Organization of domestic insurers: Chapter 48.06 RCW.

Policy dividends are payable to real party in interest: RCW 48.18.340.

48.09.010 Initial qualifications. (1) The commissioner shall not issue a certificate of authority to a domestic mutual insurer unless it has fully qualified therefor under this code, and unless it has met the minimum requirements for the kind of insurance it proposes to transact as provided in this chapter.

(2) All applications for insurance submitted by such an insurer as fulfilling qualification requirements shall be bona fide applications from persons resident in this state covering lives, property, or risks resident or located in this state.

(3) All qualifying premiums collected and initial surplus funds of such an insurer shall be in cash. Any deposit made by such an insurer in lieu of applications, premiums, and initial surplus funds, shall be in cash or in securities eligible for the investment of the capital of a domestic stock insurer transacting the same kind of insurance. [1947 c 79 § .09.01; Rem. Supp. 1947 § 45.09.01.]

| (a) Kind of insurance | (b) Minimum no. of applicants accepted | (c) Minimum no. of subjects covered | (d) Minimum premium collected | (e) Minimum amt. ins. each subject | (f) Maximum amount of ins. each subject (v) | (g) Minimum surplus funds | (h) Deposit of surplus in lieu (vi) |
|--------------------------|---|--|----------------------------------|---------------------------------------|--|------------------------------|--|
| Life (i) | 500 | 500 | annual | \$1,000 | \$ 2,500 | \$ 25,000 | \$ 50,000 |
| Disability (ii) | 500 | 500 | quart. | \$ 10 weekly indem. | \$ 25 weekly indem. | \$ 25,000 | \$ 50,000 |
| Property (iii) | 100 | 250 | annual | \$1,000 | \$ 3,000 | \$ 25,000 | \$ 50,000 |
| Vehicle (iv) | 200 | 500 | annual | \$1,000 | \$10,000 | \$150,000 | \$150,000 |
| Casualty (iv) | 250 | 250 | annual | \$1,000 | \$10,000 | \$150,000 | \$200,000 |

The following provisos are respectively applicable to the foregoing schedule and provisions as indicated by like Roman numerals appearing in such schedule:

(i) No group insurance, nor term policies for terms of less than ten years shall be included.

(ii) No group or blanket or family plans of insurance shall be included. In lieu of weekly indemnity a like premium value in medical, surgical, and hospital benefits may be provided. Any accidental death or dismemberment benefit provided shall not exceed two thousand five hundred dollars.

(iii) Only insurance of the owner's interest in real property may be included, and all such coverages must be in compliance with the provisions of subsection (2) of RCW 48.11.140.

(iv) Must include insurance of legal liability for bodily injury and property damage, to which the maximum and minimum insured amounts apply.

(v) The maximums provided for in this column (f) are net of applicable reinsurance.

48.09.081 Requirements—Kinds of insurance. (1) When newly organized a domestic mutual insurer may be authorized to transact any one of the kinds of insurance listed in the schedule contained in subsection (2) of this section.

(2) When applying for an original certificate of authority the insurer must be otherwise qualified therefor under this code, and must have received and accepted bona fide applications as to substantial insurable subjects for insurance coverage of a substantial character of the kind of insurance proposed to be transacted, must have collected in cash the full premium therefor at a rate not less than that usually charged by stock insurers for comparable coverages, must have surplus funds on hand as of the date such insurance coverages are to become effective, or, in lieu of such applications, premiums, and surplus, may deposit surplus, all in accordance with that part of the following schedule which applies to the one kind of insurance the insurer then proposes to transact:

(vi) The deposit of surplus in the amount specified in column (h) must thereafter be maintained unimpaired. The deposit is subject to the provisions of chapter sixteen of this code (deposits of insurers) [chapter 48.16 RCW]. [1957 c 193 § 4.]

48.09.090 Additional kinds of insurance. A domestic mutual insurer may be authorized to transact kinds of insurance in addition to that for which it was originally authorized, if it has otherwise complied with the provisions of this code therefor, and while it possesses and maintains surplus funds in aggregate amount not less than the minimum amount of capital and special surplus, if any, required under this code of a domestic stock insurer authorized to transact like kinds of insurance. [1957 c 193 § 5; 1947 c 79 § .09.09; Rem. Supp. 1947 § 45.09.09.]

48.09.100 Minimum surplus. A domestic mutual insurer on the cash premium plan shall at all times have and maintain surplus funds, representing the excess of

its assets over its liabilities, in amount not less than the aggregate of

(1) the amount of any surplus funds deposited by it with the commissioner to qualify for its original certificate of authority, and

(2) the amount of any additional surplus required of it pursuant to RCW 48.09.090 for authority to transact additional kinds of insurance. [1963 c 195 § 3; 1947 c 79 § .09.10; Rem. Supp. 1947 § 45.09.10.]

48.09.110 Membership. (1) Each holder of one or more insurance contracts issued by a domestic mutual insurer, other than a contract of reinsurance, is a member of the insurer, with the rights and obligations of such membership, and each insurance contract so issued shall effectively so stipulate.

(2) Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, estate, trustee or fiduciary, may be a member of a mutual insurer. [1947 c 79 § .09.11; Rem. Supp. 1947 § 45.09.11.]

48.09.120 Rights of members. (1) A domestic mutual insurer is owned by and shall be operated in the interest of its members.

(2) Each member is entitled to one vote in the election of directors and on matters coming before corporate meetings of members, subject to such reasonable minimum requirements as to duration of membership and amount of insurance held as may be made in the insurer's bylaws. The person named as the policyholder in any group insurance policy issued by such insurer shall be deemed the member, and shall have but one such vote regardless of the number of individuals insured by such policy.

(3) With respect to the management, records, and affairs of the insurer, a member shall have the same character of rights and relationship as a stockholder has toward a domestic stock insurer. [1947 c 79 § .09.12; Rem. Supp. 1947 § 45.09.12.]

48.09.130 Bylaws. A domestic mutual insurer shall adopt bylaws for the conduct of its affairs. Such bylaws, or any modification thereof, shall forthwith be filed with the commissioner. The commissioner shall disapprove any such bylaws, or as so modified, if he finds after a hearing thereon, that it is not in compliance with the laws of this state, and he shall forthwith communicate such disapproval to the insurer. No such bylaw, or modification, so disapproved shall be effective during the existence of such disapproval. [1947 c 79 § .09.13; Rem. Supp. 1947 § 45.09.13.]

48.09.140 Notice of annual meeting. (1) Notice of the time and place of the annual meeting of members of a domestic mutual insurer shall be given by imprinting such notice plainly on the policies issued by the insurer.

(2) Any change of the date or place of the annual meeting shall be made only by an annual meeting of members. Notice of such change may be given:

(a) By imprinting such new date or place on all policies which will be in effect as of the date of such changed meeting; or

(b) Unless the commissioner otherwise orders, notice of the new date or place need be given only through policies issued after the date of the annual meeting at which such change was made and in premium notices and renewal certificates issued during the twenty-four months immediately following such meeting. [1947 c 79 § .09.14; Rem. Supp. 1947 § 45.09.14.]

48.09.150 Voting—Proxies. (1) A member of a domestic mutual insurer may vote in person or by proxy given another member on any matter coming before a corporate meeting of members.

(2) An officer of the insurer shall not hold or vote the proxy of any member.

(3) No such proxy shall be valid beyond the earlier of the following dates:

(a) The date of expiration set forth in the proxy; or

(b) the date of termination of membership; or

(c) five years from the date of execution of the proxy.

(4) No member's vote upon any proposal to divest the insurer of its business and assets, or the major part thereof, shall be registered or taken except in person or by a proxy newly executed and specific as to the matter to be voted upon. [1947 c 79 § .09.15; Rem. Supp. 1947 § 45.09.15.]

48.09.160 Directors—Disqualification. No individual shall be a director of a domestic mutual insurer by reason of his holding public office. Adjudication as a bankrupt or taking the benefit of any insolvency law or making a general assignment for the benefit of creditors disqualifies an individual from being or acting as a director. [1947 c 79 § .09.16; Rem. Supp. 1947 § 45.09.16.]

48.09.180 Limitation of expenses as to property and casualty insurance. (1) For any calendar year after its first two full calendar years of operation, no domestic mutual insurer on the cash premium plan, other than one issuing nonassessable policies, shall incur any costs or expense in the writing or administration of property, disability, and casualty insurances (other than boiler and machinery or elevator) transacted by it which, exclusive of losses paid, loss adjustment expenses, investment expenses, dividends, and taxes exceeds the sum of

(a) forty percent of the net premium income during that year after deducting therefrom net earned reinsurance premiums for such year, plus

(b) all of the reinsurance commissions received on reinsurance ceded by it.

(2) The bylaws of every domestic mutual property insurer on the assessment premium plan shall impose a reasonable limitation upon its expenses. [1949 c 190 § 8; 1947 c 79 § .09.18; Rem. Supp. 1949 § 45.09.18.]

48.09.190 Procedure upon violation of limitation. The officers and directors of an insurer violating RCW 48.09.180 shall be jointly and severally liable to the insurer for any excess of expenses incurred. If the insurer

fails to exercise reasonable diligence or refuses to enforce such liability, the commissioner may prosecute action thereon for the benefit of the insurer. Such failure or refusal constitutes grounds for revocation of the insurer's certificate of authority. [1947 c 79 § .09.19; Rem. Supp. 1947 § 45.09.19.]

48.09.210 Limitation of action on officer's salary. No action to recover, or on account of, any salary or other compensation due or claimed to be due any officer or director of a domestic mutual insurer, or on any note or agreement relative thereto, shall be brought against such insurer after twelve months after the date on which such salary or compensation, or any installment thereof, first accrued. [1947 c 79 § .09.21; Rem. Supp. 1947 § 45.09.21.]

48.09.220 Contingent liability of members. (1) Each member of a domestic mutual insurer, except as otherwise provided in this chapter, shall have a contingent liability, pro rata and not one for another, for the discharge of its obligations. The contingent liability shall be in such maximum amount as is stated in the insurer's articles of incorporation, but shall be not less than one, nor more than five, additional premiums for the member's policy at the annual premium rate and for a term of one year.

(2) Every policy issued by the insurer shall contain a statement of the contingent liability.

(3) Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion of the obligations of the insurer which accrued while the policy was in force. [1949 c 190 § 9; 1947 c 79 § .09.22; Rem. Supp. 1949 § 45.09.22.]

48.09.230 Assessment of members. (1) If at any time the assets of a domestic mutual insurer doing business on the cash premium plan are less than its liabilities and the minimum surplus, if any, required of it by this code as prerequisite for continuance of its certificate of authority, and the deficiency is not cured from other sources, its directors may, if approved by the commissioner, make an assessment only on its members who at any time within the twelve months immediately preceding the date such assessment was authorized by its directors held policies providing for contingent liability.

(2) Such an assessment shall be for such an amount of money as is required, in the opinion of the commissioner, to render the insurer fully solvent, but not to result in surplus in excess of five percent of the insurer's liabilities as of the date of the assessment.

(3) A member's proportionate part of any such assessment shall be computed by applying to the premium earned, during the period since the deficiency first appeared, on his contingently liable policy or policies the ratio of the total assessment to the total premium earned during such period on all contingently liable policies which are subject to the assessment.

(4) No member shall have an offset against any assessment for which he is liable on account of any claim for unearned premium or losses payable. [1949 c 190 § 10; 1947 c 79 § .09.23; Rem. Supp. 1949 § 45.09.23.]

48.09.240 Contingent liability of members of assessment insurer. The contingent liability of members of a domestic mutual insurer doing business on the assessment premium plan shall be called upon and enforced by its directors as provided in its bylaws. [1947 c 79 § .09.24; Rem. Supp. 1947 § 45.09.24.]

48.09.250 Contingent liability as asset. Any contingent liability of members of a domestic mutual insurer to assessment does not constitute an asset of the insurer in any determination of its financial condition. [1949 c 190 § 11; 1947 c 79 § .09.25; Rem. Supp. 1949 § 45.09.25.]

48.09.260 Liability as lien on policy reserves. As to life insurance, any portion of an assessment of contingent liability upon a policyholder which remains unpaid following notice of such assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the commissioner, be secured by placing a lien on the reserves held by the insurer to the credit of such policyholder. [1949 c 190 § 12; 1947 c 79 § .09.26; Rem. Supp. 1949 § 45.09.26.]

48.09.270 Nonassessable policies. (1) A domestic mutual insurer on the cash premium plan, after it has established a surplus not less in amount than the minimum capital funds required of a domestic stock insurer to transact like kinds of insurance, and for so long as it maintains such surplus, may extinguish the contingent liability of its members to assessment and omit provisions imposing contingent liability in all policies currently issued.

(2) Any deposit made with the commissioner as a prerequisite to the insurer's certificate of authority may be included as part of the surplus required in this section.

(3) When the surplus has been so established and the commissioner has so ascertained, he shall issue to the insurer, at its request, his certificate authorizing the extinguishment of the contingent liability of its members and the issuance of policies free therefrom.

(4) While it maintains surplus funds in amount not less than the minimum capital required of a domestic stock insurer authorized to transact like kinds of insurance, and subject to the requirements of RCW 48.05-.360 as to special surplus, a foreign or alien mutual insurer on the cash premium plan may, if consistent with its charter and the laws of its domicile, issue non-assessable policies covering subjects located, resident, or to be performed in this state. [1963 c 195 § 4; 1947 c 79 § .09.27; Rem. Supp. 1947 § 45.09.27.]

48.09.280 Qualification on issuance of nonassessable policies. The commissioner shall not authorize a domestic mutual insurer so to extinguish the contingent liability of any of its members or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its members and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which such an

insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its members as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state. [1947 c 79 § .09.28; Rem. Supp. 1947 § 45.09.28.]

48.09.290 Revocation of right to issue nonassessable policies. (1) The commissioner shall revoke the authority of a domestic mutual insurer so to extinguish the contingent liability of its members if

(a) at any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority, or

(b) the insurer, by resolution of its directors approved by its members, requests that the authority be revoked.

(2) Upon revocation of such authority for any cause, the insurer shall not thereafter issue any policies without contingent liability, nor renew any policies then in force without written endorsement thereon providing for contingent liability. [1947 c 79 § .09.29; Rem. Supp. 1947 § 45.09.29.]

48.09.300 Dividends. (1) The directors of a domestic mutual insurer on the cash premium plan may from time to time apportion and pay to its members as entitled thereto, dividends only out of that part of its surplus funds which are in excess of its required minimum surplus and which represent net realized savings and net realized earnings from its business.

(2) Any classification of its participating policies and of risks assumed thereunder which the insurer may make shall be reasonable. No dividend shall be paid which is inequitable, or which unfairly discriminates as between such classifications or as between policies within the same classification.

(3) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on any policy. [1947 c 79 § .09.30; Rem. Supp. 1947 § 45.09.30.]

48.09.310 Nonparticipating policies. (1) If its articles of incorporation so provide, a domestic mutual insurer on the cash premium plan may, while it is authorized to issue policies without contingent liability to assessment, issue policies not entitled to participate in the insurer's savings and earnings.

(2) Such insurer shall not issue in this state both participating and nonparticipating policies for the same class of risks; except, that both participating and nonparticipating life insurance policies may be issued if the right or absence of the right to participate is reasonably related to the premium charged. [1947 c 79 § .09.31; Rem. Supp. 1947 § 45.09.31.]

48.09.320 Borrowed capital. (1) A domestic mutual insurer on the cash premium plan may, with the commissioner's advance approval and without the pledge of any of its assets, borrow money to defray the expenses of its organization or for any purpose required by its business, upon an agreement that such money and such

interest thereon as may be agreed upon, but not exceeding six percent per annum, shall be repaid only out of the insurer's earned surplus in excess of its required minimum surplus.

(2) Any money so borrowed shall not form a part of the insurer's legal liabilities or be the basis of any set-off; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with interest thereon accrued but unpaid.

(3) The commissioner's approval of such loan, if granted, shall specify the amount to be borrowed, the purpose for which the money is to be used, the terms and form of the loan agreement, the date by which the loan must be completed, and such other related matters as the commissioner shall deem proper. If the money is to be borrowed upon multiple agreements, the agreements shall be serially numbered. No loan agreement or series thereof shall have or be given any preferential rights over any other such loan agreement or series. No commission or promotional expense shall be incurred or be paid on account of any such loan. [1947 c 79 § .09.32; Rem. Supp. 1947 § 45.09.32.]

48.09.330 Repayment of borrowed capital. (1) The insurer may repay any loan received pursuant to RCW 48.09.320, or any part thereof as approved by the commissioner, only out of its funds which represent such loan or realized net earned surplus. No repayment shall be made which reduces the insurer's surplus below the minimum surplus required for the kinds of insurance transacted.

(2) The insurer shall repay any such loan or the largest possible part thereof when the purposes for which such funds were borrowed have been fulfilled and when the insurer's surplus is adequate to so repay without unreasonable impairment of the insurer's operations.

(3) No repayment of such loan shall be made unless approved by the commissioner. The insurer shall notify the commissioner in writing not less than sixty days in advance of its intention to repay such loan or any part thereof, and the commissioner shall forthwith ascertain whether the insurer's financial condition is such that the repayment can properly be made.

(4) Upon dissolution and liquidation of the insurer, after the retirement of all its other outstanding obligations the holders of any such loan agreements then remaining unpaid shall be entitled to payment before any distribution of surplus is made to the insurer's members. [1949 c 190 § 13; 1947 c 79 § .09.33; Rem. Supp. 1949 § 45.09.33.]

48.09.340 Impairment of surplus. (1) If the assets of a domestic mutual insurer on the cash premium plan fall below the amount of its liabilities, plus the amount of any surplus required by this code for the kinds of insurance authorized to be transacted, the commissioner shall at once ascertain the amount of the deficiency and serve notice upon the insurer to cure the deficiency within ninety days after such service of notice.

(2) If the deficiency is not made good in cash or in assets eligible under this code for the investment of the

insurer's funds, and proof thereof filed with the commissioner within such ninety-day period, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If the deficiency is not made good the insurer shall not issue or deliver any policy after the expiration of such ninety-day period. Any officer or director who violates or knowingly permits the violating of this provision shall be subject to a fine of from fifty dollars to one thousand dollars for each violation. [1949 c 190 § 14; 1947 c 79 § 09.34; Rem. Supp. 1949 § 45.09.34.]

48.09.350 Mutual may not reorganize as stock insurer—Reinsurance. (1) No domestic mutual insurer shall hereafter be converted, changed, or reorganized as a stock corporation.

(2) Such an insurer may be wholly reinsured in and its assets transferred to and its liabilities assumed by another mutual or stock insurer under such terms and conditions as are approved by the commissioner in advance of such reinsurance.

(3) The commissioner shall not approve any such reinsurance agreement which does not determine the amount of and make adequate provision for paying to policy holders of such mutual insurer, reasonable compensation for their equities as owners of such insurer, such compensation to be apportioned to policyholders as identified and in the manner prescribed in RCW 48.09.360. [1947 c 79 § .09.35; Rem. Supp. 1947 § 45.09.35.]

48.09.360 Distribution of assets upon liquidation. (1) Upon the liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness and policy obligations shall be distributed to its members who were such within the thirty-six months prior to the last termination of its certificate of authority.

(2) The distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of his membership, bear to the aggregate of all premiums so earned on the policies of all such members. If a life insurer, the insurer shall make a reasonable classification of its life insurance policies so held by such members and a formula based upon such classification for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the commissioner's approval. [1947 c 79 § .09.36; Rem. Supp. 1947 § 45.09.36.]

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Dividends not to be guaranteed: RCW 48.30.100.

Merger or consolidation: RCW 48.31.010.

Organization of domestic insurers: Chapter 48.06 RCW.

Policy dividends are payable to real party in interest: RCW 48.18.340.

48.10.010 "Reciprocal insurance" defined. "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all such persons. [1947 c 79 § .10.01; Rem. Supp. 1947 § 45.10.01.]

48.10.020 "Reciprocal insurer" defined. A "reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves. [1947 c 79 § .10.02; Rem. Supp. 1947 § 45.10.02.]

48.10.030 Scope of chapter. All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocal insurers. [1947 c 79 § .10.03; Rem. Supp. 1947 § 45.10.03.]

48.10.050 Insuring powers of reciprocals. (1) A reciprocal insurer may, upon qualifying therefor as provided by this code, transact any kind or kinds of insurance defined by this code, other than life or title insurances.

(2) A reciprocal insurer may purchase reinsurance upon the risk of any subscriber, and may grant reinsurance as to any kind of insurance which it is authorized to transact direct. [1947 c 79 § .10.05; Rem. Supp. 1947 § 45.10.05.]

48.10.060 Name—Suits. A reciprocal insurer shall:

(1) Have and use a business name. The name shall include the word "reciprocal," or "interinsurer," or "interinsurance," or "exchange," or "underwriters," or "underwriting."

(2) Sue and be sued in its own name. [1947 c 79 § .10.06; Rem. Supp. 1947 § 45.10.06.]

48.10.070 Surplus funds required. (1) A domestic reciprocal insurer hereafter formed, if it has otherwise complied with the provisions of this code, may be authorized to transact insurance if it deposits and maintains on deposit with the commissioner surplus funds as follows:

(a) To transact property insurance, surplus funds of not less than one hundred thousand dollars.

(b) To transact vehicle insurance, surplus funds of not less than two hundred thousand dollars.

(2) A domestic reciprocal insurer may be authorized to transact other kinds of insurance in addition to that for which it was originally authorized, if it has otherwise complied with the provisions of this code therefor and possesses and maintains surplus funds equal to the paid-in capital stock required under RCW 48.05.340 of a stock insurer transacting like kinds of insurance, and the special surplus, if any, required under RCW 48.05.360 as to such a stock insurer. The insurer need not deposit such additional surplus funds with the commissioner: *Provided*, That a domestic reciprocal insurer which under prior laws held authority to transact insurance in this state may continue to be so authorized so long as it otherwise qualifies therefor and maintains surplus funds in amount not less than as required under laws of this state in force at the time such authority to transact insurance in this state was granted.

(3) A domestic reciprocal insurer heretofore formed shall maintain on deposit with the commissioner surplus funds of not less than the sum of one hundred thousand dollars, and shall have additional surplus in the amount of any additional surplus funds required by this code for authority to transact kinds of insurance transacted by it in addition to that authorized by its original certificate of authority. Such additional surplus funds need not be deposited with the commissioner. [1963 c 195 § 5; 1947 c 79 § .10.07; Rem. Supp. 1947 § 45.10.07.]

48.10.080 Attorney. (1) "Attorney" as used in this chapter refers to the attorney in fact of a reciprocal insurer. The attorney may be an individual, firm, or corporation.

(2) The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign persons, firms, or corporations.

(3) The subscribers and the attorney in fact comprise a reciprocal insurer and a single entity for the purposes of chapter 48.14 RCW as to all operations under the insurer's certificate of authority. [1965 ex.s. c 70 § 35; 1947 c 79 § .10.08; Rem. Supp. 1947 § 45.10.08.]

48.10.090 Organization of reciprocal. (1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer and in compliance with this

code make application to the commissioner for a certificate of authority to transact insurance.

(2) When applying for a certificate of authority, the original subscribers and the proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner a declaration setting forth:

(a) the name of the insurer;

(b) the location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;

(c) the kinds of insurance proposed to be transacted;

(d) the names and addresses of the original subscribers;

(e) the designation and appointment of the proposed attorney and a copy of the power of attorney;

(f) the names and addresses of the officers and directors of the attorney, if a corporation, or of its members, if a firm;

(g) the powers of the subscribers' advisory committee and the names and terms of office of the members thereof;

(h) that all moneys paid to the reciprocal, after deducting therefrom any sum payable to the attorney, shall be held in the name of the insurer and for the purposes specified in the subscriber's agreement;

(i) a copy of the subscriber's agreement;

(j) a statement that each of the original subscribers has in good faith applied for insurance of the kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six months at the rate theretofore filed with and approved by the commissioner;

(k) a statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by RCW 48.10.070 is on hand;

(l) a copy of each policy, endorsement, and application form it then proposes to issue or use.

Such declaration shall be acknowledged by each such subscriber and by the attorney in the manner required for the acknowledgment of deeds to real estate. [1947 c 79 § .10.09; Rem. Supp. 1947 § 45.10.09.]

48.10.100 Policies of original subscribers, effective when. Any policy applied for by an original subscriber shall become effective coincidentally with the issuance of a certificate of authority to the reciprocal insurer. [1947 c 79 § .10.10; Rem. Supp. 1947 § 45.10.10.]

48.10.110 Certificate of authority. (1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(2) The commissioner may refuse, suspend, or revoke the certificate of authority, in addition to other grounds therefor, for failure of its attorney to comply with any provision of this code. [1947 c 79 § .10.11; Rem. Supp. 1947 § 45.10.11.]

48.10.120 Power of attorney. (1) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth:

- (a) The powers of the attorney;
 - (b) that the attorney is empowered to accept service of process on behalf of the insurer and to authorize the commissioner to receive service of process in actions against the insurer upon contracts exchanged;
 - (c) the services to be performed by the attorney in general;
 - (d) the maximum amount to be deducted from advance premiums or deposits to be paid to the attorney;
 - (e) except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one nor more than ten times the premium or premium deposit stated in the policy.
- (3) The power of attorney may:
- (a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;
 - (b) impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;
 - (c) provide for the exercise of any right reserved to the subscribers directly or through their advisory committee;
 - (d) contain other lawful provisions deemed advisable.
- (4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement or any amendment thereof, shall be used or be effective in this state until approved by the commissioner. [1949 c 190 § 15; 1947 c 79 § .10.12; Rem. Supp. 1949 § 45.10.12.]

48.10.130 Modification of subscriber's agreement or power of attorney. Modification of the terms of the subscriber's agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively, nor as to any insurance contract issued prior thereto. [1947 c 79 § .10.13; Rem. Supp. 1947 § 45.10.13.]

48.10.140 Attorney's bond. (1) Concurrently with the filing of the declaration provided for in RCW 48.10.090, (or, if an existing domestic reciprocal insurer, within ninety days after the effective date of this code) the attorney of a domestic reciprocal shall file with the commissioner a bond running to the state of Washington. The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the commissioner's approval.

(2) The bond shall be in the penal sum of twenty-five thousand dollars, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his hands, and that he will not withdraw or appropriate for his own use from the funds of the insurer any moneys or property to which he is not entitled under the power of attorney.

(3) The bond shall provide that it is not subject to cancellation unless thirty days advance notice in writing of intent to cancel is given to both the attorney and the commissioner. [1947 c 79 § .10.14; Rem. Supp. 1947 § 45.10.14.]

48.10.150 Deposit in lieu of bond. In lieu of such bond, the attorney may maintain on deposit with the commissioner a like amount in cash or in value of securities qualified under this code as insurers' investments, and subject to the same conditions as the bond. [1947 c 79 § .10.15; Rem. Supp. 1947 § 45.10.15.]

48.10.160 Actions on bond. Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any one time by one or more subscribers suffering loss through a violation of the conditions thereof or by a receiver or liquidator of the insurer. Amounts so recovered shall be deposited in and become part of the insurer's funds. [1947 c 79 § .10.16; Rem. Supp. 1947 § 45.10.16.]

48.10.170 Service of legal process. (1) A certificate of authority shall not be issued to a domestic reciprocal insurer unless prior thereto the attorney has executed and filed with the commissioner the insurer's irrevocable authorization of the commissioner to receive legal process issued in this state against the insurer upon any cause of action arising within this state.

(2) The provisions of RCW 48.05.210 shall apply to service of such process upon the commissioner.

(3) In lieu of service on the commissioner, legal process may be served upon a domestic reciprocal insurer by serving the insurer's attorney at his principal offices.

(4) Any judgment against the insurer based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective interests may appear and in an amount not exceeding their respective contingent liabilities. [1947 c 79 § .10.17; Rem. Supp. 1947 § 45.10.17.]

48.10.180 Annual statement. The annual statement of a reciprocal insurer shall be made and filed by the attorney. [1947 c 79 § .10.18; Rem. Supp. 1947 § 45.10.18.]

48.10.190 Attorney's contribution—Repayment. No contribution to a domestic reciprocal insurer's surplus by the attorney shall be retrievable by the attorney except under such terms and in such circumstances as the commissioner approves. [1947 c 79 § .10.19; Rem. Supp. 1947 § 45.10.19.]

48.10.200 Determination of financial condition. In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(1) He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposit delinquent for ninety days shall first be charged against such surplus deposit.

(3) The surplus deposits of subscribers shall not be charged as a liability.

(4) All premium deposits delinquent less than ninety days shall be allowed as assets.

(5) An assessment levied upon subscribers, and not collected, shall not be allowed as an asset.

(6) The contingent liability of subscribers shall not be allowed as an asset.

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for the compensation of the attorney. [1947 c 79 § .10.20; Rem. Supp. 1947 § 45.10.20.]

48.10.220 Who may become subscriber. Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, estate, trustee, or fiduciary may be a subscriber of a reciprocal insurer. [1947 c 79 § .10.22; Rem. Supp. 1947 § 45.10.22.]

48.10.230 Subscribers' advisory committee. (1) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

(2) Not less than three-fourths of such committee shall be composed of subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.

(3) The committee shall:

(a) Supervise the finances of the insurer;

(b) supervise the insurer's operations to such extent as to assure their conformity with the subscribers' agreement and power of attorney;

(c) procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer;

(d) have such additional powers and functions as may be conferred by the subscribers' agreement. [1947 c 79 § .10.23; Rem. Supp. 1947 § 45.10.23.]

48.10.250 Assessment liability of subscriber. (1) The liability of each subscriber subject to assessment for the obligations of the reciprocal insurer shall not be joint, but shall be individual and several.

(2) Each subscriber who is subject to assessment shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than one nor more than ten times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in RCW 48.10.290.

(3) Each assessable policy issued by the insurer shall plainly set forth a statement of the contingent liability. [1947 c 79 § .10.25; Rem. Supp. 1947 § 45.10.25.]

48.10.260 Action against subscriber requires judgment against insurer. (1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for thirty days.

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his interests may

appear and in an amount not exceeding his contingent liability, if any. [1947 c 79 § .10.26; Rem. Supp. 1947 § 45.10.26.]

48.10.270 Assessments. (1) Assessments may be levied from time to time upon the subscribers of a domestic reciprocal insurer, other than as to nonassessable policies, by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner; or by the commissioner in liquidation of the insurer.

(2) Each such subscriber's share of a deficiency for which an assessment is made, not exceeding in any event his aggregate contingent liability as computed in accordance with RCW 48.10.290, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

(4) No subscriber shall have an offset against any assessment for which he is liable, on account of any claim for unearned premium or losses payable. [1947 c 79 § .10.27; Rem. Supp. 1947 § 45.10.27.]

48.10.280 Time limit for assessment. Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

(1) While his policy is in force or within one year after its termination, he is notified by either the attorney or the commissioner of his intention to levy such assessment; or

(2) If an order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued pursuant to RCW 48.31.190 while his policy is in force or within one year after its termination. [1947 c 79 § .10.28; Rem. Supp. 1947 § 45.10.28.]

48.10.290 Aggregate liability. No one policy or subscriber as to such policy, shall be assessed or be charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year, in excess of the number of times the premium as stated in the policy as computed solely upon premium earned on such policy during that year. [1947 c 79 § .10.29; Rem. Supp. 1947 § 45.10.29.]

48.10.300 Nonassessable policies. (1) Subject to the special surplus requirements of RCW 48.11.120(3), if a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee

the commissioner shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the commissioner shall forthwith revoke the certificate. No policy shall thereafter be issued or renewed without providing for the contingent assessment liability of subscribers.

(3) The commissioner shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state. [1947 c 79 § .10.30; Rem. Supp. 1947 § 45.10.30.]

Reviser's note: RCW 48.11.120 was repealed by 1963 c 195 § 10. For capital and surplus requirements, see RCW 48.05.340-48.05.370.

48.10.310 Return of savings to subscribers. A reciprocal insurer may from time to time return to its subscribers any savings or credits accruing to their accounts. Any such distribution shall not unfairly discriminate between classes of risks, or policies, or between subscribers. [1947 c 79 § .10.31; Rem. Supp. 1947 § 45.10.31.]

48.10.320 Distribution of assets upon liquidation. Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contribution of the attorney to its surplus made as provided in RCW 48.10.190, and the return of any unused deposits, savings, or credits, shall be distributed to its subscribers who were such within the twelve months prior to the last termination of its certificate of authority according to such formula as may have been approved by the commissioner. [1947 c 79 § .10.32; Rem. Supp. 1947 § 45.10.32.]

48.10.330 Merger—Conversion to stock or mutual insurer. (1) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of the subscribers who vote upon such merger pursuant to such notice as may be approved by the commissioner and with the approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) Such a stock or mutual insurer shall be subject to the same capital requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(3) The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with RCW 48.10.320 and a reasonable length of time within which to exercise such right. [1947 c 79 § .10.33; Rem. Supp. 1947 § 45.10.33.]

48.10.340 Impairment of assets—Procedure. (1) If the assets of a domestic reciprocal insurer are at any time insufficient to discharge its liabilities other than any liability on account of funds contributed by the attorney, and to maintain the surplus required for the kinds of insurance it is authorized to transact, its attorney shall forthwith levy an assessment upon subscribers made subject to assessment by the terms of their policies for the amount needed to make up the deficiency.

(2) If the attorney fails to make the assessment within thirty days after the commissioner orders him to do so, or if the deficiency is not fully made up within sixty days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney, but including the reasonable cost of the liquidation. [1947 c 79 § .10.34; Rem. Supp. 1947 § 45.10.34.]

Chapter 48.11 INSURING POWERS

Sections

| | |
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| 48.11.020 | "Life insurance" defined. |
| 48.11.030 | "Disability insurance" defined. |
| 48.11.040 | "Property insurance" defined. |
| 48.11.050 | "Marine and transportation insurance" defined. |
| 48.11.060 | "Vehicle insurance" defined. |
| 48.11.070 | "General casualty insurance" defined. |
| 48.11.080 | "Surety insurance" defined. |
| 48.11.100 | "Title insurance" defined. |
| 48.11.130 | Reinsurance powers. |
| 48.11.140 | Limitation of single risk. |

Insuring lottery tickets: RCW 9.59.040.

Workmen's compensation: Title 51 RCW.

48.11.020 "Life insurance" defined. "Life insurance" is insurance on human lives and insurances appertaining thereto or connected therewith. For the purposes of this code the transacting of life insurance includes the granting of annuities and endowment benefits; additional benefits in event of death by accident; additional benefits in event of the total and permanent disability of the insured; and optional modes of settlement of proceeds. [1947 c 79 § .11.02; Rem. Supp. 1947 § 45.11.02.]

48.11.030 "Disability insurance" defined. "Disability insurance" is insurance against bodily injury, disablement or death by accident, against disablement resulting from sickness, and every insurance appertaining thereto. [1947 c 79 § .11.03; Rem. Supp. 1947 § 45.11.03.]

48.11.040 "Property insurance" defined. "Property insurance" is insurance against loss of or damage to real or personal property of every kind and any interest therein, from any or all hazard or cause, and against loss consequential upon such loss or damage. [1947 c 79 § .11.04; Rem. Supp. 1947 § 45.11.04.]

48.11.050 "Marine and transportation insurance" defined. "Marine and transportation insurance" is:

(1) Insurance against loss of or damage to:

(a) Vessels, craft, aircraft, vehicles, goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, securities, choses in action, evidences of debt, valuable papers, bottomry, and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting shipment, or during any delays, storage, transshipment, or reshipment incident thereto, including war risks, marine builder's risks, and all personal property floater risks.

(b) Person or property in connection with or appertaining to a marine, transit or transportation insurance, including liability for loss of or damage to either incident to the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to any person arising out of the ownership, maintenance, or use of automobiles).

(c) Precious stones, jewels, jewelry, precious metals, whether in course of transportation or otherwise.

(d) Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage); piers, wharves, docks and slips, and other aids to navigation and transportation, including dry docks and marine railways, dams and appurtenant facilities for the control of waterways.

(2) "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage, or expense incident to ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person. [1947 c 79 § .11.05; Rem. Supp. 1947 § 45.11.05.]

48.11.060 "Vehicle insurance" defined. (1) "Vehicle insurance" is insurance against loss or damage to any land vehicle or aircraft or any draft or riding animal or

to property while contained therein or thereon or being loaded or unloaded therein or therefrom, and against any loss or liability resulting from or incident to ownership, maintenance, or use of any such vehicle or aircraft or animal.

(2) Insurance against accidental death or accidental injury to individuals while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if such insurance is issued as part of insurance on the vehicle, aircraft, or draft or riding animal, shall be deemed to be vehicle insurance. [1947 c 79 § .11.06; Rem. Supp. 1947 § 45.11.06.]

48.11.070 "General casualty insurance" defined. "General casualty insurance" includes vehicle insurance as defined in RCW 48.11.060, and in addition is insurance:

(1) Against legal liability for the death, injury, or disability of any human being, or for damage to property.

(2) Of medical, hospital, surgical and funeral benefits to persons injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury or disability of human beings.

(3) Of the obligations accepted by, imposed upon, or assumed by employers under law for workmen's compensation.

(4) Against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment, or from any attempt of any of the foregoing; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail.

(5) Upon personal effects against loss or damage from any cause.

(6) Against loss or damage to glass, including its lettering, ornamentation and fittings.

(7) Against any liability and loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus and to make inspection of and issue certificates of inspection upon elevators, boilers, machinery, and apparatus of any kind.

(8) Against loss or damage to any property caused by the breakage or leakage of sprinklers, water pipes and containers, or by water entering through leaks or openings in buildings.

(9) Against loss or damage resulting from failure of debtors to pay their obligations to the insured (credit insurance).

(10) Against any other kind of loss, damage, or liability properly the subject of insurance and not within any other kind or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public policy. [1953 c 197 § 5; 1947 c 79 § .11.07; Rem. Supp. 1947 § 45.11.07.]

48.11.080 "Surety insurance" defined. "Surety insurance" includes:

(1) Credit insurance as defined in subdivision (9) of RCW 48.11.070.

(2) Bail bond insurance.

(3) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust.

(4) Guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship.

(5) Indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidence of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also against loss or damage to such an insured's premises, or to his furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat. [1967 c 150 § 8; 1947 c 79 § .11.08; Rem. Supp. 1947 § 45.11.08.]

48.11.100 "Title insurance" defined. "Title insurance" is insurance of owners of property or others having an interest therein, against loss by encumbrance, or defective titles, or adverse claim to title, and services connected therewith. [1947 c 79 § .11.10; Rem. Supp. 1947 § 45.11.10.]

48.11.130 Reinsurance powers. A domestic mutual assessment insurer shall not have authority to accept reinsurance. Any other domestic insurer may accept reinsurance only of such kinds of insurance as it is authorized to transact direct. [1947 c 79 § .11.13; Rem. Supp. 1947 § 45.11.13.]

48.11.140 Limitation of single risk. (1) No insurer shall retain any fire or surety risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten percent of its surplus to policyholders, except that:

(a) Domestic mutual insurers may insure up to the applicable limits provided by RCW 48.09.081, if greater.

(b) In the case of fire risks adequately protected by automatic sprinklers or fire risks principally of non-combustible construction and occupancy, an insurer may retain fire risks as to any one subject in an amount not exceeding twenty-five percent of the sum of (i) its unearned premium reserve and (ii) its surplus to policyholders.

(2) For the purposes of this section, a "subject of insurance" as to insurance against fire includes all properties insured by the same insurer which are reasonably subject to loss or damage from the same fire.

(3) Reinsurance in an alien reinsurer not qualified under RCW 48.05.300 may not be deducted in determining risk retained for the purposes of this section.

(4) In the case of surety insurance, the net retention shall be computed after deduction of reinsurances, the amount assumed by any co-surety, the value of any security deposited, pledged, or held subject to the consent of the surety and for the protection of the surety.

(5) This section shall not apply to insurance of marine risks or marine protection and indemnity risks. [1959 c 225 § 2; 1947 c 79 § .11.14; Rem. Supp. 1947 § 45.11.14.]

Chapter 48.12 ASSETS AND LIABILITIES

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48.12.010 "Assets" defined. In any determination of the financial condition of any insurer there shall be allowed as assets only such assets as belong wholly and exclusively to the insurer, which are registered, recorded, or held under the insurer's name, and which consist of:

(1) Cash in the possession of the insurer or in transit under its control, and the true balance of any deposit of the insurer in a solvent bank or trust company;

(2) Investments, securities, properties, and loans acquired or held in accordance with this code, and in connection therewith the following items:

(a) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

(b) Declared and unpaid dividends on stocks and shares unless such amount has otherwise been allowed as an asset.

(c) Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.

(d) Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets if such interest is in the judgment of the commissioner a collectible asset.

(e) Interest due or accrued on a mortgage loan, in amount not exceeding in any event the amount, if any,

of the difference between the unpaid principal and the value of the property less delinquent taxes thereon; but if any interest on the loan is in default more than eighteen months, or if any interest on the loan is in default and any taxes or any installment thereof on the property are and have been due and unpaid for more than eighteen months, no allowance shall be made for any interest on the loan.

(f) Rent due or accrued on real property if such rent is not in arrears for more than three months.

(3) Premium notes, policy loans, and other policy assets and liens on policies of life insurance, in amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) The net amount of uncollected and deferred premiums in the case of a life insurer which carries the full annual mean tabular reserve liability;

(5) Premiums in the course of collection, other than for life insurance, not more than ninety days past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or any of its instrumentalities;

(6) Installment premiums other than life insurance premiums, in accordance with regulations prescribed by the commissioner consistent with practice formulated or adopted by the National Association of Insurance Commissioners;

(7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon and unless otherwise required by regulation prescribed by the commissioner;

(8) The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer not disqualified to take such reinsurance under this code; or, in the case of reinsurers disqualified under this code, so much of reinsurance recoverable from such reinsurer as does not exceed the liabilities carried by the ceding insurer for amounts withheld under a reinsurance treaty with such reinsurer as security for the payment of obligations thereunder if such funds are held subject to withdrawal by, and under the control of, the ceding insurer;

(9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

(10) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him;

(11) Electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least twenty-five thousand dollars, which cost shall be amortized in full over a period not to exceed ten calendar years; and

(12) Other assets, not inconsistent with the foregoing provisions, deemed by the commissioner available for

the payment of losses and claims, at values to be determined by him. [1963 c 195 § 11; 1947 c 79 § .12.01; Rem. Supp. 1947 § 45.12.01.]

48.12.020 Nonallowable assets. In addition to assets impliedly excluded under RCW 48.12.010, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(1) Goodwill, trade names, agency plants and other like intangible assets.

(2) Prepaid or deferred charges for expenses and commissions paid by the insurer.

(3) Advances to officers (other than policy loans or loans made pursuant to RCW 48.07.130), whether secured or not, and advances to employees, agents and other persons on personal security only.

(4) Stock of such insurer, owned by it, or any equity therein or loans secured thereby, or any proportionate interest in such stock through the ownership by such insurer of an interest in another firm, corporation or business unit.

(5) Furniture, furnishings, fixtures, safes, equipment, vehicles, library, stationery, literature, and supplies; except, electronic and mechanical machines authorized by subsection (11) of RCW 48.12.010, or such personal property as the insurer is permitted to hold pursuant to paragraph (e) of subsection (2) of RCW 48.13.160, or which is acquired through foreclosure of chattel mortgages acquired pursuant to RCW 48.13.150, or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office, and similar purposes.

(6) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this code. [1963 c 195 § 12; 1947 c 79 § .12.02; Rem. Supp. 1947 § 45.12.02.]

48.12.030 Liabilities. In any determination of the financial condition of an insurer, liabilities to be charged against its assets shall include:

(1) The amount of its capital stock outstanding, if any; and

(2) The amount, estimated consistent with the provisions of this chapter, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expense of adjustment or settlement thereof; and

(3) With reference to life and disability insurance, and annuity contracts,

(a) the amount of reserves on life insurance policies and annuity contracts in force (including disability benefits for both active and disabled lives, and accidental death benefits, in or supplementary thereto) and disability insurance, valued according to the tables of mortality, tables of morbidity, rates of interest, and methods adopted pursuant to this chapter which are applicable thereto; and

(b) any additional reserves which may be required by the commissioner, consistent with practice formulated

or approved by the National Association of Insurance Commissioners, on account of such insurances; and

(4) With reference to insurances other than those specified in subdivision (3) of this section, and other than title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this chapter; and

(5) Taxes, expenses, and other obligations accrued at the date of the statement; and

(6) Any additional reserve set up by the insurer for a specific liability purpose or required by the commissioner consistent with practices adopted or approved by the National Association of Insurance Commissioners. [1973 1st ex.s. c 162 § 1; 1947 c 79 § .12.03; Rem. Supp. 1947 § 45.12.03.]

48.12.040 Unearned premium reserve, property, casualty, and surety insurance. (1) With reference to insurances against loss or damage to property, except as provided in RCW 48.12.050, and with reference to all general casualty insurances, and surety insurances, every insurer shall maintain an unearned premium reserve on all policies in force.

(2) The commissioner may require that such reserve shall be equal to the unearned portions of the gross premiums in force after deducting authorized reinsurance, as computed on each respective risk from the policy's date of issue. If the commissioner does not so require, the portions of the gross premiums in force, less authorized reinsurance, to be held as a premium reserve, shall be computed according to the following table:

| Term for which policy was written | Reserve for unearned premium |
|--------------------------------------|--|
| One year, or less | 1/2 |
| Two years | First year 3/4 Second year 1/4 |
| Three years | First year 5/6 Second year 1/2 Third year 1/6 |
| Four years | First year 7/8 Second year 5/8 Third year 3/8 Fourth year 1/8 |
| Five years | First year 9/10 Second year 7/10 Third year 1/2 Fourth year 3/10 Fifth year 1/10 |
| Over five years | Pro rata |

(3) In lieu of computation according to such table, all of such reserves may be computed, at the insurer's option, on a monthly pro rata basis.

(4) After adopting any one of the methods for computing such reserve an insurer shall not change methods without the commissioner's approval. [1973 1st ex.s. c 162 § 2; 1947 c 79 § .12.04; Rem. Supp. 1947 § 45.12.04.]

48.12.050 Unearned premium reserve, marine and transportation insurance. With reference to marine and transportation insurances, premiums on trip risks not terminated shall be deemed unearned and the commissioner may require the insurer to carry a reserve thereon equal to one hundred percent on trip risks written during the month ended as of the date of statement; and computed upon a pro rata basis or, with the commissioner's consent, in accordance with the alternative methods provided in RCW 48.12.040 for all other risks. [1947 c 79 § .12.05; Rem. Supp. 1947 § 45.12.05.]

48.12.060 Reserve—Disability insurance. For all disability insurance policies the insurer shall maintain an active life reserve which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the commissioner and, in no event, less in the aggregate than the pro rata gross unearned premiums for such policies. [1973 1st ex.s. c 162 § 3; 1947 c 79 § .12.06; Rem. Supp. 1947 § 45.12.06.]

48.12.070 Loss records. An insurer shall maintain a complete and itemized record showing all losses and claims as to which it has received notice, including with regard to property, casualty, surety, and marine and transportation insurances, all notices received of the occurrence of any event which may result in a loss. [1947 c 79 § .12.07; Rem. Supp. 1947 § 45.12.07.]

48.12.080 Increased reserves. (1) If the commissioner determines that an insurer's unearned premium reserves, however computed, are inadequate, he may require the insurer to compute such reserves or any part thereof according to such other method or methods as are prescribed in this chapter.

(2) If the loss experience of an insurer shows that its loss reserves, however estimated, are inadequate, the commissioner shall require the insurer to maintain loss reserves in such increased amount as is needed to make them adequate. [1947 c 79 § .12.08; Rem. Supp. 1947 § 45.12.08.]

48.12.090 Loss reserves—Liability insurance. The reserves for outstanding losses and loss expenses under policies of personal injury liability insurance and under policies of employer's liability insurance shall be computed as follows:

(1) For all liability suits being defended under policies written:

(a) Ten years or more prior to the date of determination, one thousand five hundred dollars for each suit;

(b) Five or more and less than ten years prior to the date of determination, one thousand dollars for each suit;

(c) Three or more and less than five years prior to the date of determination, eight hundred fifty dollars for each suit.

In any event the total loss and loss expense reserves for all such liability policies written more than three years prior to the date of determination shall not be less than the aggregate of the estimated unpaid losses and

loss expenses under such policies computed on an individual case basis.

(2) For all liability policies written during the three years immediately preceding the date of determination, such reserves shall be the sum of the reserves for each such year, which shall be sixty percent of the earned premiums on liability policies written during such year less all loss and loss expense payments made under such policies written in such year. In any event such reserves for each of such three years shall be not less than the aggregate of the estimated unpaid losses and loss expenses for claims incurred under liability policies written in the corresponding year computed on an individual case basis. [1947 c 79 § .12.09; Rem. Supp. 1947 § 45.12.09.]

48.12.100 Unallocated liability loss expense. (1) All unallocated liability loss expense payments shall be distributed as follows:

(a) If made in a given calendar year subsequent to the first four years in which an insurer has been issuing liability policies, thirty-five percent shall be charged to the policies written that year, forty percent to the policies written in the preceding year, ten percent to the policies written in the second year preceding, ten percent to the policies written in the third year preceding and five percent to the policies written in the fourth year preceding.

(b) If made in each of the first four calendar years in which an insurer issues liability policies, in the first calendar year one hundred percent shall be charged to the policies written in that year; in the second calendar year fifty percent shall be charged to the policies written in that year and fifty percent to the policies written in the preceding year; in the third calendar year forty percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, and twenty percent to the policies written in the second year preceding; and in the fourth calendar year thirty-five percent shall be charged to the policies written in that year, forty percent to the policies written in the preceding year, fifteen percent to the policies written in the second year preceding and ten percent to the policies written in the third year preceding.

(2) A schedule showing such distribution shall be included in the annual statement. [1947 c 79 § .12.10; Rem. Supp. 1947 § 45.12.10.]

48.12.110 Schedule of experience. Any insurer transacting any liability or workmen's compensation insurances shall include in its annual statement filed with the commissioner, a schedule of its experience thereunder in such form as the commissioner may prescribe. [1947 c 79 § .12.11; Rem. Supp. 1947 § 45.12.11.]

48.12.120 Loss reserve—Workmen's compensation insurance. The loss reserve for workmen's compensation insurance shall be as follows:

(1) For all compensation claims under policies of compensation insurance written more than three years prior to the date as of which the statement is made, the loss reserve shall be the present values at four percent

interest of the determined and the estimated future payments.

(2) For all compensation claims under policies of compensation insurance written in the three years immediately preceding the date as of which the statement is made, the loss reserve shall be sixty-five percent of the earned compensation premiums of each of such three years, less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years; but in any event such reserve shall be not less than the present value at three and one-half percent interest of the determined and the estimated unpaid compensation claims under policies written during each of such years. [1947 c 79 § .12.12; Rem. Supp. 1947 § 45.12.12.]

48.12.130 Unallocated workmen's compensation loss expense. (1) All unallocated workmen's compensation loss expense payments shall be distributed as follows:

(a) If made in a given calendar year subsequent to the first three years in which an insurer has been issuing such compensation policies, forty percent shall be charged to the policies written in that year, forty-five percent to the policies written in the preceding year, ten percent to the policies written in the second year preceding and five percent to the policies written in the third year preceding.

(b) If made in each of the first three calendar years in which an insurer issues compensation policies, in the first calendar year one hundred percent shall be charged to the policies written in that year; in the second calendar year fifty percent shall be charged to the policies written in that year, and fifty percent to the policies written in the preceding year; in the third calendar year forty-five percent shall be charged to the policies written in that year, forty-five percent to the policies written in the preceding year and ten percent to the policies written in the second year preceding.

(2) A schedule showing such distribution shall be included in the annual statement. [1947 c 79 § .12.13; Rem. Supp. 1947 § 45.12.13.]

48.12.140 "Loss payments", "loss expense" defined. "Loss payments" and "loss expense payments" as used with reference to liability and workmen's compensation insurances shall include all payments to claimants, payments for medical and surgical attendance, legal expenses, salaries and expenses of investigators, adjusters and claims field men, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses and all other payments made on account of claims, whether such payments are allocated to specific claims or are unallocated. [1947 c 79 § .12.14; Rem. Supp. 1947 § 45.12.14.]

48.12.150 Standard valuation law—Life insurance. (1) This section shall be known as the standard valuation law.

(2) Annual valuation: The commissioner shall annually value, or cause to be valued, the reserve liabilities

(hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state, except that in the case of an alien insurer such valuation shall be limited to its insurance transactions in the United States, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or others) used in the calculation of such reserves. In calculating such reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. He may accept, in his discretion, the insurer's calculation of such reserves. In lieu of the valuation of the reserves herein required of any foreign or alien insurer, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(3) Minimum valuation standard:

(a) The minimum standard for the valuation of all such policies and contracts issued prior to the operative date of RCW 48.23.350 shall be as follows:

For policies issued prior to the operative date no standard of valuation for ordinary policies, whether on the net level premium, preliminary term, or select and ultimate reserve basis, shall be less than that determined upon such basis according to the American Experience Table of Mortality with three and one-half percent interest; except, that when the preliminary term basis is used it shall not exceed one year. The commissioner may vary the standard of valuation in particular cases of invalid lives and other extra hazards, provided, that the interest rate used is not greater than three and one-half percent.

Except as otherwise provided in subsection (3)(b)(ii) of this section the legal minimum standard for the valuation of annuities issued on or after January 1, 1912, and prior to the operative date of RCW 48.23.350, shall be McClintock's Table of Mortality Among Annuitants, with interest at three and one-half percent per annum, but annuities deferred ten or more years and written in connection with life or term insurance may be valued on the same mortality table from which the consideration or premiums were computed, with interest not higher than three and one-half percent per annum.

The legal minimum standard for the valuation of industrial policies issued on or after the first day of January, 1912, and prior to the operative date of RCW 48.23.350, shall be the American Experience Table of Mortality with interest at three and one-half percent per annum; except, that any life insurer may voluntarily value such industrial policies according to the Standard Industrial Mortality Table or the Substandard Industrial Mortality Table.

The legal minimum standard for the valuation of group life insurance policies under which premium rates are not guaranteed for a period in excess of five years shall be, at the option of the life insurer issuing such policies, either the American Men Ultimate Table of Mortality, the Commissioners 1941 Standard Ordinary Mortality Table, or any other table approved by the commissioner, with interest at three and one-half percent per annum.

(b) (i) Except as otherwise provided in subsection (3)(b)(ii) of this section the minimum standard for the valuation of all such policies and contracts issued on or after the operative date of RCW 48.23.350 shall be the Commissioners Reserve Valuation Method defined in subsection (4) of this section, three and one-half percent interest or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after July 16, 1973, four percent interest, and the following tables:

(A) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of RCW 48.23.350(5a), and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date: *Provided*, That for any category of such policies issued on female risks on or after July 1, 1957, modified net premiums and present values, referred to in subsection (4) of this section, may be calculated according to an age not more than three years younger than the actual age of the insured.

(B) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of RCW 48.23.350(5b), and the Commissioners 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date.

(C) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies,—the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner.

(D) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies,—the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(E) For total and permanent disability benefits in or supplementary to ordinary policies or contracts,—for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of

benefit; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the insurer, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(F) For accidental death benefits in or supplementary to policies,—for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the insurer, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(G) For group life insurance, life insurance issued on the substandard basis and other special benefits,—such tables as may be approved by the commissioner.

(ii) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation method defined in subsection (4) of this section and the following tables and interest rates:

(A) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts.

(B) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts the 1971 Group Mortality Table, or any modification of this table approved by the commissioner, and six percent interest.

After July 16, 1973 any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1979, which shall be the operative date of this subsection for such insurer, provided that an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January 1, 1979.

(4) Commissioners Reserve Valuation Method: Reserves according to the Commissioners Reserve Valuation Method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits

provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits (excluding extra premiums on a substandard policy) that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b) as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one-year term premium for such benefits provided for in the first policy year.

Reserves according to the Commissioners Reserve Valuation Method for (1) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (2) annuity and pure endowment contracts, (3) disability and accidental death benefits in all policies and contracts, and (4) all other benefits, except life insurance and endowment benefits in life insurance policies, shall be calculated by a method consistent with the principles of this subsection.

(5) Minimum aggregate reserves: In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of RCW 48.23.350, be less than the aggregate reserves calculated in accordance with the method set forth in subsection (4) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(6) Optional reserve bases: Reserves for all policies and contracts issued prior to the operative date of RCW 48.23.350 may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

For any category of policies, contracts or benefits specified in subsection (3) of this section, issued on or after the operative date of RCW 48.23.350, reserves may be calculated, at the option of the insurer, according to any standard or standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein: *Provided*, That reserves for participating life insurance policies issued on or after the operative date of RCW 48.23.350 may, with the consent of the commissioner, be calculated according to a rate of interest

lower than the rate of interest used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half percent the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

Any such insurer which at any time had adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(7) Deficiency reserve: If the gross premium charged by any life insurer on any policy or contract is less than the net premium for the policy or contract according to the mortality table, rate of interest and method used in calculating the reserve thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period. [1973 1st ex.s. c 162 § 4; 1963 c 195 § 13; 1961 c 194 § 3; 1959 c 225 § 3; 1957 c 193 § 7; 1947 c 79 § .12.15; Rem. Supp. 1947 § 45.12.15.]

48.12.160 Reserve credit for reinsurance. An insurer may take credit for reserves on risks ceded to a reinsurer to the extent reinsured, except that:

(1) No credit shall be taken on account of reinsurance in an alien reinsurer not qualified under RCW 48.05.300, and

(2) no credit shall be allowed, as an asset or as a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer nor unless under the contract of reinsurance the liability for such reinsurance is assumed by the assuming insurer or insurers as of the same effective date.

A reinsurance agreement may provide that the liquidator or receiver or statutory successor of an insolvent ceding insurer shall give written notice of the pendency of a claim against the insolvent ceding insurer on the policy or bond reinsured within a reasonable time after such claim is filed in the insolvency proceeding and that during the pendency of such claim any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding insurer or its liquidator or receiver or statutory successor.

The expense thus incurred by the assuming insurer shall be chargeable subject to court approval against the insolvent ceding insurer as a part of the expense of liquidation to the extent of a proportionate share of the

benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer. [1947 c 79 § .12.16; Rem. Supp. 1947 § 45.12.16.]

48.12.170 Valuation of bonds. (1) All bonds or other evidences of debt having a fixed term and rate held by any insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(a) If purchased at par, at the par value.

(b) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at the earliest date callable at par or maturing at par and so as to yield in the meantime the effective rate of interest at which the purchase was made; or in lieu of such method, according to such accepted method of valuation as is approved by the commissioner.

(c) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

(d) Unless otherwise provided by a valuation established or approved by the National Association of Insurance Commissioners, no such security shall be carried at above call price for the entire issue during any period within which the security may be so called.

(2) Such securities not amply secured or in default as to principal or interest shall be carried at market value.

(3) The commissioner shall have full discretion in determining the method of calculating values according to the rules set forth in this section, and not inconsistent with any such methods then currently formulated or approved by the National Association of Insurance Commissioners. [1947 c 79 § .12.17; Rem. Supp. 1947 § 45.12.17.]

48.12.180 Valuation of stocks. (1) Securities, other than those referred to in RCW 48.12.170, held by an insurer shall be valued, in the discretion of the commissioner, at their market value, or at their appraised value, or at prices determined by him as representing their fair market value, all consistent with any current method for the valuation of any such security formulated or approved by the National Association of Insurance Commissioners.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of computation as he may approve.

(3) The stock of a subsidiary of an insurer shall be valued on the basis of the greater of (a) the value of only such of the assets of such subsidiary as would constitute lawful investments for the insurer if acquired or held directly by the insurer or (b) such other value determined pursuant to rules and cumulative limitations

which shall be promulgated by the commissioner to effectuate the purposes of this chapter. [1973 c 151 § 1; 1947 c 79 § .12.18; Rem. Supp. 1947 § 45.12.18.]

48.12.190 Valuation of property. (1) Real property acquired pursuant to a mortgage loan or a contract for a deed, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(2) Other real property held by an insurer shall not be valued at any amount in excess of fair value, less reasonable depreciation based on the estimated life of the improvements.

(3) Personal property acquired pursuant to chattel mortgages made under RCW 48.13.150 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at date of acquisition together with taxes and expenses incurred in connection with such acquisition, or the fair value of such property, whichever amount is the lesser. [1967 ex.s. c 95 § 10; 1947 c 79 § .12.19; Rem. Supp. 1947 § 45.12.19.]

48.12.200 Valuation of purchase money mortgages. Purchase money mortgages shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or ninety percent of the fair value of such real property, whichever is less. [1947 c 79 § .12.20; Rem. Supp. 1947 § 45.12.20.]

Chapter 48.13 INVESTMENTS

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Valuation of investments: RCW 48.12.170–48.12.200.

48.13.010 Scope of chapter—Eligible investments.

(1) Investments of domestic insurers shall be eligible to be held as assets only as prescribed in this chapter.

(2) Any particular investment of a domestic insurer held by it on the effective date of this code and which was a legal investment immediately prior thereto, shall be deemed a legal investment hereunder.

(3) The eligibility of an investment shall be determined as of the date of its making or acquisition.

(4) Except as to RCW 48.13.360, this chapter applies only to domestic insurers. [1973 c 151 § 2; 1947 c 79 § .13.01; Rem. Supp. 1947 § 45.13.01.]

48.13.020 General qualifications. (1) No security or other investment shall be eligible for purchase or acquisition under this chapter unless it is interest bearing or interest accruing or dividend or income paying, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit, the interest or income accruing thereon; except,

(a) that an insurer may acquire real property as provided in RCW 48.13.160, and

(b) that this section shall not prevent participation by an insurer in a mortgage loan if the insurer holds a senior participation in such mortgage or deed of trust giving it substantially the rights of a first mortgagee as to its interest in that loan.

(2) No security shall be eligible for purchase at a price above its market value.

(3) No provision of this chapter shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets, or if acquired pursuant to a lawful and bona fide agreement of bulk reinsurance or consolidation. Any investments so acquired through bulk reinsurance or consolidation, which are not otherwise eligible under this chapter, shall be disposed of pursuant to RCW 48.13.290 if personal property or securities, or pursuant to RCW 48.13.170 if real property. [1967 ex.s. c 95 § 11; 1947 c 79 § .13.02; Rem. Supp. 1947 § 45.13.02.]

48.13.030 Limitation on securities of one entity. An insurer shall not, except with the consent of the commissioner, have at any time any combination of investments in or loans upon the security of the obligations, property, and securities of any one person, institution, or municipal corporation aggregating an amount exceeding four percent of the insurer's assets. This section shall not apply to investments in, or loans upon the security of general obligations of the government of the United States or of any state of the United States, nor

to investments in foreign securities pursuant to subsection (1) of RCW 48.13.180, nor include policy loans made pursuant to RCW 48.13.190. [1947 c 79 § .13.03; Rem. Supp. 1947 § 45.13.03.]

48.13.040 Public obligations. An insurer may invest any of its funds in bonds or other evidences of debt, not in default as to principal or interest, which are valid and legally authorized obligations issued, assumed or guaranteed by the United States or by any state thereof or by any territory or possession of the United States or by the District of Columbia or by any county, city, town, village, municipality or district therein or by any political subdivision thereof or by any civil division or public instrumentality of one or more of the foregoing, if, by statutory or other legal requirements applicable thereto, such obligations are payable, as to both principal and interest, (1) from taxes levied or required to be levied upon all taxable property or all taxable income within the jurisdiction of such governmental unit or, (2) from adequate special revenues pledged or otherwise appropriated or by law required to be provided for the purpose of such payment, but not including any obligation payable solely out of special assessments on properties benefited by local improvements unless adequate security is evidenced by the ratio of assessment to the value of the property or the obligation is additionally secured by an adequate guaranty fund required by law. [1947 c 79 § .13.04; Rem. Supp. 1947 § 45.13.04.]

48.13.050 Corporate obligations. An insurer may invest any of its funds in obligations other than those eligible for investment under RCW 48.13.110 if they are issued, assumed, or guaranteed by any solvent institution created or existing under the laws of the United States or of any state, district or territory thereof, and are qualified under any of the following:

(1) Obligations which are secured by adequate collateral security and bear fixed interest if during each of any three, including the last two, of the five fiscal years next preceding the date of acquisition by the insurer, the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges, as defined in RCW 48.13.060, have been not less than one and one-fourth times the total of its fixed charges for such year. In determining the adequacy of collateral security, not more than one-third of the total value of such required collateral shall consist of stock other than stock meeting the requirements of RCW 48.13.080.

(2) Fixed interest bearing obligations, other than those described in subdivision (1) of this section, if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period and if during the last year of such period such net earnings have been not less than one and one-half times its fixed charges for such year.

(3) Adjustment, income or other contingent interest obligations if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed

charges for a period of five fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable to such period and if during each of the last two years of such period such net earnings have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year. [1947 c 79 § .13.05; Rem. Supp. 1947 § 45.13.05.]

48.13.060 Terms defined. (1) Certain terms used are defined for the purposes of this chapter as follows:

(a) "Obligation" includes bonds, debentures, notes or other evidences of indebtedness.

(b) "Institution" includes corporations, joint stock associations, and business trusts.

(c) "Net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of such institution.

(d) "Fixed charges" includes interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.

(2) If net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary institutions, such net earnings shall be determined after provision for income taxes of subsidiaries and after proper allowance for minority stock interest, if any; and the required coverage of fixed charges shall be computed on a basis including fixed charges and preferred dividends of subsidiaries other than those payable by such subsidiaries to the parent corporation or to any other of such subsidiaries, except that if the minority common stock interest in the subsidiary corporation is substantial, the fixed charges and preferred dividends may be apportioned in accordance with regulations prescribed by the commissioner. [1947 c 79 § .13.06; Rem. Supp. 1947 § 45.13.06.]

48.13.070 Securities of merged or reorganized institutions. In applying the earnings test set forth in RCW 48.13.060 to any such institution, whether or not in legal existence during the whole of such five years next preceding the date of investment by the insurer, which has at any time during the five-year period acquired substantially all of the assets of any other institution or institutions by purchase, merger, consolidation or otherwise, or has been reorganized pursuant to the bankruptcy law, the earnings of the predecessor or constituent institutions, or of the institution so reorganized, available for interest and dividends for such portion of the five-year period as may have preceded such acquisition, or such reorganization, may be included in the earnings of such issuing, assuming or guaranteeing institution for such portion of such period as may be determined in accordance with adjusted or pro forma consolidated earnings statements covering such portion of such period and giving effect to all stock or shares

outstanding, and all fixed charges existing, immediately after such acquisition, or such reorganization. [1947 c 79 § .13.07; Rem. Supp. 1947 § 45.13.07.]

48.13.080 Preferred or guaranteed stocks. (1) An insurer may invest any of its funds, in an aggregate amount not exceeding ten per cent of its assets, if a life insurer, or not exceeding fifteen percent of such assets if other than a life insurer, in preferred or guaranteed stocks or shares, other than common stocks, of solvent institutions existing under the laws of the United States or of any state, district or territory thereof, if all of the prior obligations and prior preferred stocks, if any, of such institution at the date of acquisition by the insurer are eligible as investments under this chapter; and if qualified under either of the following:

(a) Preferred stocks or shares shall be deemed qualified if both these requirements are met:

(i) The net earnings of the institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer must have averaged per year not less than one and one-half times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements applicable to such period; and

(ii) during each of the last two years of such period such net earnings must have been not less than one and one-half times the sum of its fixed charges, contingent interest and preferred dividend requirements for such year. The term "preferred dividend requirements" shall be deemed to mean cumulative or noncumulative dividends whether paid or not.

(b) Guaranteed stocks or shares shall be deemed qualified if the assuming or guaranteeing institution meets the requirements of subdivision (1) of RCW 48.13.050, construed so as to include as a fixed charge the amount of guaranteed dividends of such issue or the rental covering the guarantee of such dividends.

(2) An insurer shall not invest in or loan upon any preferred stock having voting rights, of any one institution, in excess of such proportion of the total issued and outstanding preferred stock of such institution having voting rights, as would, when added to any common shares of such institution, directly or indirectly held by it, exceed fifteen percent of all outstanding shares of such institution having voting rights, nor an amount in excess of the limit provided by RCW 48.13.030. This limitation shall not apply to such shares of a corporation which is the subsidiary of an insurer, and which corporation is engaged exclusively in a kind of business properly incidental to the insurance business of the insurer. [1947 c 79 § .13.08; Rem. Supp. 1947 § 45.13.08.]

48.13.090 Trustees' or receivers' obligations. An insurer may invest any of its funds, in an aggregate amount not exceeding two percent of its assets, in certificates, notes, or other obligations issued by trustees or receivers of institutions existing under the laws of the United States or of any state, district or territory thereof, which, or the assets of which, are being administered under the direction of any court having jurisdiction, if

such obligation is adequately secured as to principal and interest. [1947 c 79 § .13.09; Rem. Supp. 1947 § 45.13.09.]

48.13.100 Equipment trust certificates. An insurer may invest any of its funds, in an aggregate amount not exceeding ten percent of its assets, in equipment trust obligations or certificates which are adequately secured, or in other adequately secured instruments evidencing an interest in transportation equipment wholly or in part within the United States and the right to receive determined portions of rental, purchase or other fixed obligatory payments for the use or purchase of such transportation equipment. [1947 c 79 § .13.10; Rem. Supp. 1947 § 45.13.10.]

48.13.110 Mortgages, mortgage bonds, notes, contracts. An insurer may invest any of its funds in:

(1) (a) Bonds or evidences of debt which are secured by first mortgages or deeds of trust on improved unencumbered real property located in the United States;

(b) Chattel mortgages in connection therewith pursuant to RCW 48.13.150;

(c) The equity of the seller of any such property in the contract for a deed, covering the entire balance due on a bona fide sale of such property, in amount not to exceed ten thousand dollars or the amount permissible under RCW 48.13.030, whichever is greater, in any one such contract for deed.

(2) Purchase money mortgages or like securities received by it upon the sale or exchange of real property acquired pursuant to RCW 48.13.160 as amended in section 7 of this 1969 amendatory act.

(3) Bonds or notes secured by mortgage or trust deed guaranteed or insured by the Federal Housing Administration under the terms of an act of congress of the United States of June 27, 1934, entitled the "National Housing Act," as amended.

(4) Bonds or notes secured by mortgage or trust deed guaranteed or insured as to principal in whole or in part by the Administrator of Veterans' Affairs pursuant to the provisions of Title III of an act of congress of the United States of June 22, 1944, entitled the "Service-men's Readjustment Act of 1944," as amended.

(5) Evidences of debt secured by first mortgages or deeds of trust upon leasehold estates, running for a term of not less than fifteen years beyond the maturity of the loan as made or as extended, in improved real property, otherwise unencumbered, and if the mortgagee is entitled to be subrogated to all the rights under the leasehold. [1969 ex.s. c 241 § 4; 1947 c 79 § .13.11; Rem. Supp. 1947 § 45.13.11.]

Reviser's note: "section 7 of this 1969 amendatory act" refers to section 7 of chapter 241, Laws of 1969 ex.s., which amended RCW 48.13.160.

48.13.120 Investments limited by property value. (1) An investment made pursuant to the provisions of RCW 48.13.110 shall not exceed seventy-five percent of the fair value of the particular property at the time of investment. This restriction shall not apply to purchase

money mortgages or like securities received by an insurer upon the sale or exchange of real property acquired pursuant to RCW 48.13.160.

(2) The extent to which a mortgage loan made under subdivision (3) or (4) of RCW 48.13.110 is guaranteed or insured by the Federal Housing Administration or guaranteed by the Administrator of Veterans' Affairs may be deducted before application of the limitations contained in subsection (1) of this section. [1969 ex.s. c 241 § 5; 1967 c 150 § 11; 1955 c 303 § 1; 1949 c 190 § 16; 1947 c 79 § .13.12; Rem. Supp. 1949 § 45.13.12.]

48.13.125 Mortgage loans on one family dwellings—Limitation on amortization. Loans on one family dwellings secured by mortgages or deeds of trust or investments therein shall be amortized within not more than thirty years and two months by payments of installments thereon at regular intervals not less frequent than every three months; except those guaranteed or insured in whole or in part by the Federal Housing Administration, the Administrator of Veterans' Affairs or the Farmers Home Administration. [1969 ex.s. c 241 § 6; 1967 c 150 § 10.]

48.13.130 "Encumbrance" defined. (1) Real property shall not be deemed to be encumbered within the meaning of RCW 48.13.110 by reason of the existence of:

(a) Instruments reserving mineral, oil, timber or similar rights, rights of way, sewer rights, or rights in walls;

(b) Liens for taxes or assessments not delinquent, or liens not delinquent for community recreational facilities, or for the maintenance of community facilities, or for service and maintenance of water rights;

(c) Building restrictions or other restrictive covenants;

(d) Encroachments, if such encroachments are taken into encroachment in determining the fair value of the property;

(e) A lease under which rents or profits are reserved to the owner if in any event the security for the loan or investment is a first lien upon the real property; or

(f) With respect to loans secured by mortgage, deed of trust, or other collateral guaranteed or insured in full or in part by the government of the United States, such encumbrances as are allowed as exceptions in title by the administrator or administration of the division of such government so guaranteeing or insuring.

(2) If under any of the exceptions set forth in subsection (1) of this section there is any sum owing but not due or delinquent, the total amount of such sum shall be deducted from the amount which otherwise might be loaned on the property. The value of any mineral, oil, timber or similar right reserved shall not be included in the fair value of the property. [1955 c 303 § 2; 1947 c 79 § .13.13; Rem. Supp. 1947 § 45.13.13.]

48.13.140 Appraisal of property—Insurance—Limit of loan. (1) The fair value of property shall be determined by appraisal by a competent appraiser at the time of the acquisition of real property or of the making

or acquiring of a mortgage loan or investing in a contract for the deed thereon; except, that as to bonds or notes secured by mortgage or trust deed guaranteed or insured by the Federal Housing Administration, or guaranteed or insured as to principal in full or in part by the Administrator of Veterans' Affairs, or guaranteed or insured by the Farmers Home Administration, the valuation made by such administration or administrator shall be deemed to have been made by a competent appraiser for the purposes of this subsection.

(2) Buildings and other improvements located on mortgaged premises shall be kept insured for the benefit of the mortgagee against loss or damage from fire in an amount not less than the unpaid balance of the obligation, or the insurable value of the property, whichever is the lesser.

(3) An insurer shall not make or acquire a loan or loans upon the security of any one parcel of real property in aggregate amount in excess of twenty-five thousand dollars or more than the amount permissible under RCW 48.13.030, whichever is the greater. [1967 ex.s. c 95 § 12; 1955 c 303 § 3; 1947 c 79 § .13.14; Rem. Supp. 1947 § 45.13.14.]

48.13.150 Auxiliary chattel mortgages. (1) In connection with a mortgage loan on the security of real property designed and used primarily for residential purposes only, acquired pursuant to RCW 48.13.110, an insurer may loan or invest an amount not exceeding twenty percent of the amount loaned on or invested in such real property mortgage, on the security of a chattel mortgage for a term of not more than five years representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.

(2) The term "durable equipment" shall include only mechanical refrigerators, mechanical laundering machines, heating and cooking stoves and ranges, mechanical kitchen aids, vacuum cleaners, and fire extinguishing devices; and in addition in the case of apartment houses and hotels, room furniture and furnishings.

(3) Prior to acquisition of a chattel mortgage, items of property to be included shall be separately appraised by a competent appraiser and the fair market value thereof determined. No such chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property. [1947 c 79 § .13.15; Rem. Supp. 1947 § 45.13.15.]

48.13.160 Real property owned—Home office building. (1) An insurer may own and invest or have invested in its home office and branch office buildings any of its funds in aggregate amount not to exceed ten percent of its assets unless approved by the commissioner, or if a mutual or reciprocal insurer not to exceed ten percent of its assets nor such amount as would reduce its surplus, exclusive of such investment, below fifty thousand dollars unless approved by the commissioner.

(2) An insurer may own real property acquired in satisfaction or on account of loans, mortgages, liens, judgments, or other debts previously owing to the insurer in the course of its business.

(3) An insurer may invest or have invested in aggregate amount not exceeding three percent of its assets in the following real property, and in the repair, alteration, furnishing, or improvement thereof:

(a) Real property requisite for its accommodation in the convenient transaction of its business if approved by the commissioner.

(b) Real property acquired by gift or devise.

(c) Real property acquired in exchange for real property owned by it. If necessary in order to consummate such an exchange, the insurer may put up cash in amount not to exceed twenty percent of the fair value of its real property to be so exchanged, in addition to such property.

(d) Real property acquired through a lawful merger or consolidation with it of another insurer and not required for the purposes specified in subsection (1) and in paragraph (a) of subsection (2) of this section.

(e) Upon approval of the commissioner, in real property and equipment incident to real property, requisite or desirable for the protection or enhancement of the value of other real property owned by the insurer.

(4) A domestic life insurer with assets of at least twenty-five million dollars and at least ten million dollars in capital and surplus, and a domestic property and casualty insurer with assets of at least seventy-five million dollars and at least thirty million dollars in capital and surplus, or, if a mutual or reciprocal property or casualty insurer, at least thirty million dollars in surplus, may, in addition to the real property included in subsections (1), (2) and (3) of this section, own such real property other than property to be used primarily for agricultural, horticultural, ranch, mining, recreational, amusement, or club purposes, as may be acquired as an investment for the production of income, or as may be acquired to be improved or developed for such investment purpose pursuant to an existing program therefor, subject to the following limitations and conditions:

(a) The cost of each parcel of real property so acquired under this subsection (4), including the estimated cost to the insurer of the improvement or development thereof, when added to the book value of all other real property under this subsection (4), together with the admitted value of all common stock, then held by it, shall not exceed twenty percent of its admitted assets or fifty percent of its surplus over the minimum required surplus, whichever is greater, as of the thirty-first day of December next preceding; and

(b) The cost of each parcel of real property so acquired, including the estimated cost to the insurer of the improvement or development thereof, shall not exceed as of the thirty-first day of December next preceding, four percent of its admitted assets.

(c) Indirect or proportionate interests in real estate held by a domestic life insurer through any subsidiary shall be included in proportion to such insurer's interest in the subsidiary in applying the limits provided in subsection (4). [1973 c 151 § 3; 1969 ex.s. c 241 § 7; 1967

ex.s. c 95 § 13; 1949 c 190 § 17; 1947 c 79 § .13.16; Rem. Supp. 1949 § 45.13.16.]

48.13.170 Disposal of real property—Time limit.

(1) Real property acquired by an insurer pursuant to paragraph (a) of subsection (3) of RCW 48.13.160 shall be disposed of within five years after it has ceased being necessary for the use of the insurer in the transaction of its business. Real property acquired by an insurer pursuant to loans, mortgages, liens, judgments, or other debts, or pursuant to paragraphs (b), (c), (d), and (e) of subsection (3) of RCW 48.13.160 shall be disposed of within five years after date of acquisition. The time for any such disposal may be extended by the commissioner for a definite additional period or periods upon application and proof that forced sale of the property, otherwise necessary, would be against the best interests of the insurer.

(2) Any such real property held by the insurer without the commissioner's consent beyond the time permitted for its disposal shall not be carried or allowed as an asset. [1967 ex.s. c 95 § 14; 1947 c 79 § .13.17; Rem. Supp. 1947 § 45.13.17.]

48.13.180 Foreign securities. (1) An insurer authorized to transact insurance in a foreign country may invest any of its funds, in aggregate amount not exceeding its deposit and reserve obligations incurred in such country, in securities of or in such country possessing characteristics and of a quality similar to those required pursuant to this chapter for investments in the United States.

(2) An insurer may invest any of its funds, in an aggregate amount not exceeding five percent of its assets, in addition to any amount permitted pursuant to subsection (1) of this section, in obligations of the governments of the Dominion of Canada or of Canadian provinces or municipalities, and in obligations of Canadian corporations, which have not been in default during the five years next preceding date of acquisition, and which are otherwise of equal quality to like United States public or corporate securities as prescribed in this chapter. [1947 c 79 § .13.18; Rem. Supp. 1947 § 45.13.18.]

48.13.190 Policy loans. A life insurer may loan to its policyholder upon the pledge of the policy as collateral security, any sum not exceeding the legal reserve maintained on the policy. [1947 c 79 § .13.19; Rem. Supp. 1947 § 45.13.19.]

48.13.200 Savings and share accounts. An insurer may invest or deposit any of its funds in share or savings accounts of savings and loan associations, or in savings accounts of banks, and in any one such institution only to the extent that such an account is insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation. [1947 c 79 § .13.20; Rem. Supp. 1947 § 45.13.20.]

48.13.210 Insurance stocks. (1) An insurer other than a life insurer may invest a portion of its surplus funds in an aggregate amount not exceeding fifty percent of its surplus over its capital stock and other liabilities, or thirty-five percent of its capital funds, whichever is greater, in the stocks of other insurers organized and existing under the laws of states of the United States. Indirect or proportionate interests in insurance stocks held by an insurer through any intermediate subsidiary or subsidiaries shall be included in applying the limitations provided in subsections (1), (2), and (3) of this section.

(2) A life insurer may invest in such insurance stocks in an aggregate amount not exceeding the smaller of the following amounts: Five percent of its assets; or twenty-five percent of its surplus over its capital stock and other liabilities, or of surplus over its required minimum surplus if a mutual life insurer.

(3) An insurer shall not purchase or hold as an investment more than five percent of the voting stock of any one other insurer, and subject further to the investment limits of RCW 48.13.030. This limitation shall not apply if such other insurer is the subsidiary of, and substantially all its shares having voting powers are owned by, an insurer other than a life insurer.

(4) No such insurance stock shall be eligible as an investment unless it meets the qualifications for stocks of other corporations as set forth in RCW 48.13.220.

(5) The limitations on investment in insurance stocks set forth in this chapter shall not apply to stocks acquired under a plan for merger of the insurers which has been approved by the commissioner or to shares received as stock dividends upon shares already owned. [1947 c 79 § .13.21; Rem. Supp. 1947 § 45.13.21.]

48.13.220 Common stocks—Investment—Acquisition—Engaging in certain businesses. (1) After satisfying the requirements of RCW 48.13.260, an insurer may invest any of its funds in common shares of stock in solvent United States corporations that qualify as a sound investment; except, that as to life insurers such investments shall further not aggregate an amount in excess of fifty percent of the insurer's surplus over its minimum required surplus.

(2) The insurer shall not invest in or loan upon the security of more than ten percent of the outstanding common shares of any one such corporation, subject further to the aggregate investment limitation of RCW 48.13.030.

(3) The limitations of subsection (2) of this section shall not apply to investment in the securities of any subsidiary corporations of the insurer which are engaged or organized to engage exclusively in one or more of the following businesses:

(a) Acting as an insurance agent for its parent or for any of its parent's insurer subsidiaries or affiliates;

(b) Investing, reinvesting, or trading in securities or acting as a securities broker or dealer for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(c) Rendering management, sales, or other related services to any investment company subject to the Federal Investment Company Act of 1940, as amended;

(d) Rendering investment advice;

(e) Rendering services related to the functions involved in the operation of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims appraisal, and collection services;

(f) Acting as administrator of employee welfare benefit and pension plans for governments, government agencies, corporations, or other organizations or groups;

(g) Ownership and management of assets which the parent could itself own and manage: *Provided*, That the aggregate investment by the insurer and its subsidiaries acquired pursuant to this paragraph shall not exceed the limitations otherwise applicable to such investments by the parent;

(h) Acting as administrative agent for a government instrumentality which is performing an insurance function or is responsible for a health or welfare program;

(i) Financing of insurance premiums;

(j) Any other business activity reasonably ancillary to an insurance business;

(k) Owning a corporation or corporations engaged or organized to engage exclusively in either, or both (i) owning an insurer or insurers to the extent permitted by this chapter, or (ii) one or more of the businesses specified in paragraph (a) through (k) of this subsection inclusive.

(4) No acquisition of a majority of the total outstanding common shares of any corporation shall be made pursuant to this section unless a notice of intention of such proposed acquisition shall have been filed with the commissioner not less than ninety days, or such shorter period as may be permitted by the commissioner, in advance of such proposed acquisition, nor shall any such acquisition be made if the commissioner at any time prior to the expiration of the notice period finds that the proposed acquisition is contrary to law, or determines that such proposed acquisition would be contrary to the best interests of the parent insurer's policyholders or of the people of this state. The following shall be the only factors to be considered in making the foregoing determination:

(a) The availability of the funds or assets required for such acquisition;

(b) The fairness of any exchange of stock, assets, cash, or other consideration for the stock or assets to be received;

(c) The impact of the new operation on the parent insurer's surplus and existing insurance business and the risks inherent in the parent insurer's investment portfolio and operations;

(d) The fairness and adequacy of the financing proposed for the subsidiary;

(e) The likelihood of undue concentration of economic power;

(f) Whether the effect of the acquisition may be substantially to lessen competition in any line of commerce

in insurance or to tend to create a monopoly therein; and

(g) Whether the acquisition might result in an excessive proliferation of subsidiaries which would tend to unduly dilute management effectiveness or weaken financial strength or otherwise be contrary to the best interests of the parent insurer's policyholders or of the people of this state. At any time after an acquisition, the commissioner may order its disposition if he finds, after notice and hearing, that its continued retention is hazardous or prejudicial to the interests of the parent insurer's policyholders. The contents of each notice of intention of a proposed acquisition filed hereunder and information pertaining thereto shall be kept confidential, shall not be subject to subpoena, and shall not be made public unless after notice and hearing the commissioner determines that the interests of policyholders, stockholders, or the public will be served by the publication thereof.

(5) A domestic insurance company may, provided that it maintains books and records which separately account for such business, engage directly in any business referred to in paragraphs (d), (e), (h), and (j) of subsection (3) of this section either to the extent necessarily or properly incidental to the insurance business the insurer is authorized to do in this state or to the extent approved by the commissioner and subject to any limitations he may prescribe for the protection of the interests of the policyholders of the insurer after taking into account the effect of such business on the insurer's existing insurance business and its surplus, the proposed allocation of the estimated cost of such business, and the risks inherent in such business as well as the relative advantages to the insurer and its policyholders of conducting such business directly instead of through a subsidiary. [1973 c 151 § 4; 1949 c 190 § 18; 1947 c 79 § .13.22; Rem. Supp. 1949 § 45.13.22.]

48.13.230 Collateral loans. An insurer may loan its funds upon the pledge of securities or evidences of debt eligible for investment under this chapter. As at date made, no such loan shall exceed in amount ninety percent of the market value of such collateral pledged, except that loans upon pledges of United States government bonds may be equal to the market value of the bonds pledged. The amount so loaned shall be included in the maximum percentage of funds permitted to be invested in the kinds of securities or evidences of debt pledged or permitted by RCW 48.13.030. [1947 c 79 § .13.23; Rem. Supp. 1947 § 45.13.23.]

48.13.240 Miscellaneous investments. (1) An insurer may loan or invest its funds in an aggregate amount not exceeding the lesser of the following sums: Five percent of its assets, or fifty percent of its surplus over its capital and other liabilities, or if a mutual or reciprocal insurer fifty percent of its surplus over minimum required surplus, in kinds of loans or investments not otherwise specifically made eligible for investment and not specifically prohibited or made ineligible by this or other provisions of this code.

(2) No such loan or investment shall be represented by

- (a) any item described in RCW 48.12.020; or
- (b) any loan or investment of a kind specifically made eligible under any other provision of this code; or
- (c) any loan, investment, or asset theretofore acquired or held by the insurer under any other category of loans or investments.

(3) No one such investment or loan shall exceed the amount specified in subsection (1) of this section or one percent of the insurer's assets, whichever is the lesser.

(4) The insurer shall keep a separate record of all investments acquired under this section. [1947 c 79 § .13.24; Rem. Supp. 1947 § 45.13.24.]

48.13.250 Special consent investments. Upon advance approval of the commissioner and in compliance with RCW 48.13.020, an insurer may make any investment or kind of investment or exchange of assets otherwise prohibited or not eligible under any other section of this chapter. The commissioner's order of approval if granted shall specify whether the investment or any part thereof may be credited to required minimum capital or surplus investments, or to investment of reserves. [1947 c 79 § .13.25; Rem. Supp. 1947 § 45.13.25.]

48.13.260 Required investments for capital and reserves. (1) An insurer shall invest and keep invested its funds aggregating in amount, if a stock insurer, not less than one hundred percent of its minimum required capital, or if a mutual or reciprocal insurer, not less than one hundred percent of its required minimum surplus, in cash or investments eligible in accordance with RCW 48.13.040 (public obligations), and in mortgage loans on real property located within this state, pursuant to RCW 48.13.110.

(2) In addition to the investments required by subsection (1) of this section, an insurer shall invest and keep invested its funds aggregating not less than one hundred percent of its reserves required by this code in cash or premiums in course of collection or in investments eligible in accordance with the following sections: RCW 48.13.040 (public obligations), 48.13.050 (corporate obligations), 48.13.080 (preferred or guaranteed stocks), 48.13.090 (trustees' or receivers' obligations), 48.13.100 (equipment trust certificates), 48.13.110 (mortgages, loans and contracts), 48.13.150 (auxiliary chattel mortgages), 48.13.160 (real property, home office building, etc.), 48.13.180 (foreign securities), 48.13.190 (policy loans), 48.13.200 (savings and share accounts), 48.13.220 (common stocks), 48.13.230 (collateral loans), 48.13.250 (special consent investments).

(3) This section shall not apply to title insurers nor to mutual insurers on the assessment premium plan. [1971 ex.s. c 13 § 16; 1947 c 79 § .13.26; Rem. Supp. 1947 § 45.13.26.]

Severability—1971 ex.s. c 13: See RCW 48.31A.900.

48.13.265 Investments secured by real estate—Amount restricted. An insurer shall not invest or have invested at any one time more than sixty-five percent of

its assets in investments in real estate, real estate contracts, and notes, bonds and other evidences of debt secured by mortgage on real estate, as described in RCW 48.13.110 and 48.13.160. Any insurer which, on the effective date of this act, has in excess of sixty-five percent of its assets so invested shall not make any further such investments while such excess exists. [1957 c 193 § 8.]

Reviser's note: The "effective date of this act" was midnight June 12, 1957, see preface 1957 session laws.

48.13.270 Prohibited investments. In addition to investments excluded under other provisions of this code, an insurer shall not, except with the commissioner's approval in advance, invest in or loan its funds upon the security of, or hold:

(1) Issued shares of its own capital stock, except for the purpose of mutualization in accordance with RCW 48.08.080;

(2) Securities issued by any corporation, except as specifically authorized by this chapter directly or by exception, if a majority of the outstanding stock of such corporation, or a majority of its stock having voting powers, is or will be after such acquisition, directly or indirectly owned by the insurer, or by any combination of the insurer and the insurer's directors, officers, parent corporation, and subsidiaries;

(3) Securities issued by any corporation if a majority of its stock having voting power is owned directly or indirectly by or for the benefit of any one or more of the insurer's officers and directors;

(4) Any investment or loan ineligible under the provisions of RCW 48.13.030;

(5) Securities issued by any insolvent corporation;

(6) Any investment or security which is found by the commissioner to be designed to evade any prohibition of this code. [1947 c 79 § .13.27; Rem. Supp. 1947 § 45.13.27.]

48.13.280 Securities underwriting, agreements to withhold or repurchase, prohibited. No insurer shall

(1) participate in the underwriting of the marketing of securities in advance of their issuance or enter into any transaction for such underwriting for the account of such insurer jointly with any other person; or

(2) enter into any agreement to withhold from sale any of its property, or to repurchase any property sold by it. [1947 c 79 § .13.28; Rem. Supp. 1947 § 45.13.28.]

48.13.290 Disposal of ineligible property or securities.

(1) Any ineligible personal property or securities acquired by an insurer may be required to be disposed of within the time not less than six months specified by order of the commissioner, unless before that time it attains the standard of eligibility, if retention of such property or securities would be contrary to the policyholders or public interest in that it tends to substantially lessen competition in the insurance business or threatens impairment of the financial condition of the insurer.

(2) Any prohibited personal property or securities acquired by an insurer shall be disposed of forthwith or

within any period specified by order of the commissioner.

(3) Any property or securities ineligible only because of being excess of the amount permitted under this chapter to be invested in the category to which it belongs shall be ineligible only to the extent of such excess. [1973 c 151 § 5; 1947 c 79 § .13.29; Rem. Supp. 1947 § 45.13.29.]

48.13.340 Authorization of investments. No investment, loan, sale or exchange thereof shall, except as to the policy loans of a life insurer, be made by any domestic insurer unless authorized or approved by its board of directors or by a committee charged by the board of directors or the bylaws with the duty of making such investment, loan, sale or exchange. The minutes of any such committee shall be recorded and reports thereof shall be submitted to the board of directors for approval or disapproval. [1949 c 190 § 19; 1947 c 79 § .13.34; Rem. Supp. 1949 § 45.13.34.]

48.13.350 Record of investments. (1) As to each investment or loan of the funds of a domestic insurer a written record in permanent form showing the authorization thereof shall be made and signed by an officer of the insurer or by the chairman of such committee authorizing the investment or loan.

(2) As to each such investment or loan the insurer's records shall contain:

(a) In the case of loans: The name of the borrower; the location and legal description of the property; a physical description, and the appraised value of the security; the amount of the loan, rate of interest and terms of repayment.

(b) In the case of securities: The name of the obligor; a description of the security and the record of earnings; the amount invested, the rate of interest or dividend, the maturity and yield based upon the purchase price.

(c) In the case of real estate: The location and legal description of the property; a physical description and the appraised value; the purchase price and terms.

(d) In the case of all investments:

(i) The amount of expenses and commissions if any incurred on account of any investment or loan and by whom and to whom payable if not covered by contracts with mortgage loan representatives or correspondents which are part of the insurer's records.

(ii) The name of any officer or director of the insurer having any direct, indirect, or contingent interest in the securities or loan representing the investment, or in the assets of the person in whose behalf the investment or loan is made, and the nature of such interest. [1949 c 190 § 20; 1947 c 79 § .13.35; Rem. Supp. 1949 § 45.13.35.]

48.13.360 Investments of foreign and alien insurers. The investments of a foreign or alien insurer shall be as permitted by the laws of its domicile but shall be of a quality substantially as high as those required under this chapter for similar funds of like domestic insurers. [1947 c 79 § .13.36; Rem. Supp. 1947 § 45.13.36.]

**Chapter 48.14
FEES AND TAXES**

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48.14.010 Fee schedule. (1) The commissioner shall collect in advance the following fees:

- (a) For filing charter documents:**
 - (i) Original charter documents, bylaws or record of organization of insurers, or certified copies thereof, required to be filed \$ 25.00
 - (ii) Amended charter documents, or certified copy thereof, other than amendments of bylaws \$ 10.00
 - (iii) No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.
- (b) Certificate of authority:**
 - (i) Issuance \$100.00
 - (ii) Renewal \$ 25.00
- (c) Annual statement of insurer, filing \$ 20.00**
- (d) Organization or financing of domestic insurers and affiliated corporations:**
 - (i) Application for solicitation permit, filing \$ 15.00
 - (ii) Issuance of solicitation permit \$ 25.00
- (e) Agents' licenses:**
 - (i) Agent's licenses for life, or disability insurance, only, or both for same insurer, each year \$ 5.00
 - (ii) Agent's license for other kind or kinds of insurance, three-year period \$ 25.00
Filing of appointment of each such agent \$ 10.00
 - (iii) Limited license issued pursuant to RCW 48.17.190, each year \$ 5.00
 - (iv) Temporary license as agent \$ 5.00
- (f) Brokers' licenses:**
 - (i) Resident or nonresident broker, casualty-property or life and disability, each year \$ 25.00
 - (ii) All lines broker's license \$ 50.00
 - (iii) Surplus line broker, twelve-month period \$100.00
 - (iv) Temporary license as broker \$ 25.00
- (g) Solicitors' license, each year \$ 5.00**

- (h) Adjusters' licenses:**
 - (i) Independent adjuster, each year \$ 15.00
 - (ii) Public adjuster, each year \$ 15.00
- (i) Resident general agent's license, each year \$ 25.00**
- (j) Examination for license, each examination:**
 - (i) Filing application for first examination for license \$ 3.00
 - (ii) Resident or nonresident broker's license \$ 25.00
 - (iii) All other examinations \$ 10.00
- (k) Miscellaneous services:**
 - (i) Filing other documents \$ 3.00
 - (ii) Commissioner's certificate under seal \$ 3.00
 - (iii) Copy of documents filed in the commissioner's office, reasonable charge therefor as determined by the commissioner.

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the general fund. [1969 ex.s. c 241 § 8; 1967 c 150 § 12; 1955 c 303 § 4; 1947 c 79 § .14.01; Rem. Supp. 1947 § 45.14.01.]

48.14.020 Premium taxes. (1) Subject to other provisions of this chapter, each authorized insurer except title insurers shall on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax on premiums. Except as provided in subsection (2) of this section, such tax shall be in the amount of two percent of all premiums, excluding amounts returned to or the amount of reductions in premiums allowed to holders of industrial life policies for payment of premiums directly to an office of the insurer, collected or received by the insurer during the preceding calendar year in the case of foreign and alien insurers, and in the amount of one percent of all such premiums in the case of domestic insurers, for direct insurances, other than ocean marine and foreign trade insurances, after deducting premiums paid to policyholders as returned premiums, upon risks or property resident, situated, or to be performed in this state. For the purposes of this section the consideration received by an insurer for the granting of an annuity is deemed to be a premium.

(2) In the case of insurers which require the payment by their policyholders at the inception of their policies of the entire premium thereon in the form of premiums or premium deposits which are the same in amount, based on the character of the risks, regardless of the length of term for which such policies are written, such tax shall be in the amount of two percent of the gross amount of such premiums and premium deposits upon policies on risks resident, located, or to be performed in this state, in force as of the thirty-first day of December next preceding, less the unused or unabsorbed portion of such premiums and premium deposits computed at the average rate thereof actually paid or credited to policyholders or applied in part payment of any renewal

premiums or premium deposits on one-year policies expiring during such year.

(3) Each authorized insurer shall with respect to all ocean marine and foreign trade insurance contracts written within this state during the preceding calendar year, on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax of three-quarters of one percent on its gross underwriting profit. Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such ocean marine and foreign trade insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include, for computation of the tax prescribed by this subsection, the amounts refunded, or paid as participation dividends, by such insurers to the holders of such contracts.

(4) The state does hereby preempt the field of imposing excise or privilege taxes upon insurers or their agents, other than title insurers, and no county, city, town or other municipal subdivision shall have the right to impose any such taxes upon such insurers or their agents.

(5) If an authorized insurer collects or receives any such premiums on account of policies in force in this state which were originally issued by another insurer and which other insurer is not authorized to transact insurance in this state on its own account, such collecting insurer shall be liable for and shall pay the tax on such premiums.

(6) This section shall be effective as to and shall govern the payment of all taxes falling due after the effective date of this code. [1969 ex.s. c 241 § 9; 1947 c 79 § .14.02; Rem. Supp. 1947 § 45.14.02.]

48.14.021 Reduction of tax—Policies connected with pension, etc., plans exempt or qualified under internal revenue code. As to premiums received from policies or contracts issued in connection with a pension, annuity or profit-sharing plan exempt or qualified under sections 401, 403(b), 404, or 501(a) of the United States internal revenue code, the rate of tax specified in RCW 48.14.020 shall be reduced twelve and one-half percent with respect to the tax payable in 1964, twenty-five percent with respect to the tax payable in 1965, thirty-seven and one-half percent with respect to the tax payable in 1966, fifty percent with respect to the tax payable in 1967, sixty-two and one-half percent with respect to the tax payable in 1968, seventy-five percent with respect to the tax payable in 1969, eighty-seven and one-half percent with respect to the tax payable in 1970, and one hundred percent with respect to the tax payable in 1971 and annually thereafter. [1974 1st ex.s. c 132 § 1; 1963 c 166 § 1.]

48.14.030 Tax statement. The insurer shall file with the commissioner as part of its annual statement a statement of premiums so collected or received according to such form as shall be prescribed and furnished by the commissioner. In every such statement the reporting of premiums for tax purposes shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement. [1947 c 79 § .14.03; Rem. Supp. 1947 § 45.14.03.]

48.14.040 Retaliatory provision. (1) If pursuant to the laws of any other state or country, any taxes, fines, penalties, licenses, fees, deposits, or other obligations or prohibitions, in the aggregate, or additional to or at a net rate in excess of any such taxes, fines, penalties, licenses, fees, deposits or other obligations or prohibitions imposed by the laws of this state upon like foreign or alien insurers and their agents and solicitors, are imposed on insurers of this state and their agents doing business in such other state or country, a like rate, obligation or prohibition may be imposed by the commissioner, as to any item or combination of items involved, upon all insurers of such other state or country and their agents doing business in this state, so long as such laws remain in force or are so applied.

(2) For the purposes of this section an alien insurer, may be deemed to be domiciled in the state wherein it has established its principal office or agency in the United States. If no such office or agency has been established, the domicile of the alien insurer shall be deemed to be the country under the laws of which it is formed. [1949 c 190 § 21, part; 1947 c 79 § .14.04; Rem. Supp. 1949 § 45.14.04.]

48.14.050 "Ocean marine and foreign trade insurances" defined. For the purposes of this code other than as to chapter 48.19 RCW "ocean marine and foreign trade insurances" shall include only:

(1) Insurances upon vessels, crafts, hulls and of interests therein or with relation thereto;

(2) Insurance of marine builders' risks, marine war risks, and contracts of marine protection and indemnity insurance;

(3) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition;

(4) Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation coastwise, including transportation by land, water or air from point of origin to final destination, in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or re-shipment incident thereto. [1947 c 79 § .14.05; Rem. Supp. 1947 § 45.14.05.]

48.14.060 Failure to pay tax—Penalty. (1) Any insurer failing to file its tax statement and to pay the specified tax on premiums for more than thirty days after date due shall be liable to a penalty of twenty-five

dollars for each additional day of delinquency. In such event the tax may be collected by distraint, and the penalty recovered by any action instituted by the commissioner in any court of competent jurisdiction. The amount of any such penalty collected shall be paid to the state treasurer and credited to the general fund.

(2) At his discretion the commissioner may revoke the certificate of authority of any such delinquent insurer, such certificate of authority not to be reissued until all taxes and penalties incurred by the insurer have been fully paid and the insurer has otherwise qualified for the certificate of authority. [1947 c 79 § .14.06; Rem. Supp. 1947 § 45.14.06.]

48.14.070 Refunds. In event any person has paid to the commissioner any tax, license fee or other charge in error or in excess of that which he is lawfully obligated to pay, the commissioner shall upon written request made to him within six years of the date of such payment, make a refund thereof either by crediting the amount toward payment of charges due or to become due from such person, or by making a cash refund. To facilitate such cash refunds the commissioner may establish a revolving fund out of funds appropriated by the legislature for his use. [1947 c 79 § .14.07; Rem. Supp. 1947 § 45.14.07.]

48.14.080 Premium tax in lieu of other forms. As to insurers other than title insurers, the taxes imposed by this title shall be in lieu of all other taxes, except taxes on real and tangible personal property and excise taxes on the sale, purchase or use of such property. [1949 c 190 § 21, part; Rem. Supp. 1949 § 45.14.08.]

48.14.090 Determining amount of direct premium taxable in this state. In determining the amount of direct premium taxable in this state, all such premiums written, procured, or received in this state shall be deemed written upon risks or property resident, situated, or to be performed in this state except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. [1963 c 195 § 14.]

48.14.100 Foreign or alien insurers, continuing liability for taxes. Any foreign or alien insurer authorized to do business in this state which hereafter either withdraws from the state or has its certificate of authority suspended or revoked shall continue to pay premium taxes pursuant to this chapter as to policies upon risks or property resident, situated, or to be performed in this state, which policies were issued during the time the insurer was authorized in this state. [1963 c 195 § 15.]

Chapter 48.15 UNAUTHORIZED INSURERS

Sections

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| 48.15.020 | Solicitation by unauthorized insurer prohibited. |
| 48.15.030 | Validity of contracts illegally effectuated. |
| 48.15.040 | "Surplus line" coverage. |
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| 48.15.070 | Surplus line brokers—Licensing. |
| 48.15.080 | Broker may accept business. |
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| 48.15.110 | Broker's annual statement. |
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| 48.15.130 | Penalty for default. |
| 48.15.140 | Revocation of broker's license. |
| 48.15.150 | Legal process against surplus line insurer. |
| 48.15.160 | Exemptions from surplus line requirements. |
| 48.15.170 | Records of insureds—Inspection. |

48.15.020 Solicitation by unauthorized insurer prohibited. (1) An insurer not thereunto authorized by the commissioner shall not solicit insurance business in this state, nor transact insurance business in this state except as provided in this chapter.

(2) No person shall, in this state, represent an unauthorized insurer except as provided in this chapter. This provision shall not apply to any adjuster or attorney at law representing such an insurer from time to time in this state in his professional capacity.

(3) Each violation of this section shall constitute a separate offense punishable by a fine of not less than fifty dollars nor more than one thousand dollars. [1947 c 79 § .15.02; Rem. Supp. 1947 § 45.15.02.]

48.15.030 Validity of contracts illegally effectuated. A contract of insurance effectuated by an unauthorized insurer in violation of the provisions of this code shall be voidable except at the instance of the insurer. [1947 c 79 § .15.03; Rem. Supp. 1947 § 45.15.03.]

48.15.040 "Surplus line" coverage. If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated as "surplus lines," may be procured from unauthorized insurers subject to the following conditions:

(1) The insurance must be procured through a licensed surplus line broker.

(2) The insurance must not be procurable, after diligent effort has been made to do so from among a majority of the insurers authorized to transact that kind of insurance in this state and placing the insurance in an unauthorized insurer must not be for the purpose of securing a lower premium rate than would be accepted by any authorized insurer.

(3) At the time of the procuring of any such insurance an affidavit setting forth the facts referred to in subdivision (2) of this section must be executed by the surplus line broker. Such affidavit shall be filed with the commissioner within thirty days after the insurance is procured. [1947 c 79 § .15.04; Rem. Supp. 1947 § 45.15.04.]

48.15.050 Endorsement of contract. Every insurance contract procured and delivered as a surplus line coverage pursuant to this chapter shall have stamped upon it and be initialed by or bear the name of the surplus line broker who procured it, the following:

"This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Washington, enacted in 1947." [1947 c 79 § .15.05; Rem. Supp. 1947 § 45.15.05.]

48.15.060 Validity of contracts. Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this chapter shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers. [1947 c 79 § .15.06; Rem. Supp. 1947 § 45.15.06.]

48.15.070 Surplus line brokers—Licensing. Any person deemed by the commissioner to be competent and trustworthy and while maintaining an office at a designated location in this state may be licensed as a surplus line broker, as follows:

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner.

(2) The license fee shall be one hundred dollars for each license year during any part of which the license is in force. The license year shall be from the date of issuance of the license.

(3) Prior to issuance of license the applicant shall file with the commissioner and thereafter for as long as the license remains in effect he shall keep in force a bond in favor of the state of Washington in the penal sum of five thousand dollars, with authorized corporate sureties approved by the commissioner, conditioned that he will conduct business under the license in accordance with the provisions of this chapter and that he will promptly remit the taxes provided by RCW 48.15.120. No such bond shall be terminated unless not less than thirty days prior written notice thereof is filed with the commissioner. [1959 c 225 § 4; 1947 c 79 § .15.07; Rem. Supp. 1947 § 45.15.07.]

48.15.080 Broker may accept business. A licensed surplus line broker may accept and place surplus line business for any insurance agent or broker licensed in this state for the kind of insurance involved, and may compensate such agent or broker therefor. [1947 c 79 § .15.08; Rem. Supp. 1947 § 45.15.08.]

48.15.085 Liability of insurer assuming direct risk. (1) If pursuant to the surplus lines provisions of this chapter an insurer has assumed direct risk under a coverage and the premium therefor has been paid to the broker who placed such insurance, the insurer shall be liable to the insured for unearned premiums payable upon cancellation of the insurance, whether or not the broker is indebted to the insurer for such premium or otherwise. This provision shall not affect rights as between the insurer and the broker.

(2) Each such insurer shall be deemed to have subjected itself to this section by acceptance of such direct risk. [1959 c 225 § 5.]

48.15.090 Solvent insurer required. (1) A surplus line broker shall not knowingly place surplus line insurance with insurers unsound financially. The broker shall ascertain the financial condition of the unauthorized insurer before placing insurance therewith. The broker shall not so insure with any insurer having surplus as to

policyholders of less than six hundred and fifty thousand dollars, unless there is on file with the commissioner a copy of a trust agreement, certified by the trustee, evidencing a subsisting trust deposit of not less than six hundred and fifty thousand dollars by such insurer with a bank or trust company in the United States, and which deposit is held for the protection of United States policyholders. The commissioner may, by rule and regulation, prescribe the terms under which the foregoing financial requirements may be waived in circumstances where insurance cannot be otherwise procured on risks located in this state.

(2) For any violation of this section the broker shall be fined not less than twenty-five dollars or more than two hundred and fifty dollars, his surplus line broker's license shall be revoked, and the broker may not again be so licensed within a period of two years thereafter. [1969 ex.s. c 241 § 10; 1955 c 303 § 5; 1947 c 79 § .15.09; Rem. Supp. 1947 § 45.15.09.]

48.15.100 Record of surplus line broker. (1) Each licensed surplus line broker shall keep a full and true record of each surplus line contract procured by him including a copy of the daily report, if any, showing such of the following items as may be applicable:

- (a) Amount of the insurance;
- (b) Gross premiums charged;
- (c) Return premium paid, if any;
- (d) Rate of premium charged upon the several items of property;
- (e) Effective date of the contract, and the terms thereof;
- (f) Name and address of the insurer;
- (g) Name and address of the insured;
- (h) Brief general description of property insured and where located;
- (i) Other information as may be required by the commissioner.

(2) All such records as to any particular transaction shall be kept available and open to the inspection of the commissioner at any business time during the five years next following the date of completion of such transaction. [1955 c 303 § 6; 1947 c 79 § .15.10; Rem. Supp. 1947 § 45.15.10.]

48.15.110 Broker's annual statement. (1) Each surplus line broker shall on or before the first day of March of each year file with the commissioner a verified statement of all surplus line insurance transacted by him during the preceding calendar year.

(2) The statement shall be on forms as prescribed and furnished by the commissioner and shall show:

- (a) Aggregate of net premiums;
- (b) Additional information as required by the commissioner. [1955 c 303 § 7; 1947 c 79 § .15.11; Rem. Supp. 1947 § 45.15.11.]

48.15.120 Premium tax—Surplus lines. (1) On or before the first day of March of each year each surplus line broker shall remit to the state treasurer through the commissioner a tax on the premiums, exclusive of sums

collected to cover federal and state taxes and examination fees, on surplus line insurance subject to tax transacted by him during the preceding calendar year as shown by his annual statement filed with the commissioner, and at the same rate as is applicable to the premiums of authorized foreign insurers under this code. Such tax when collected shall be credited to the general fund.

(2) If a surplus line policy covers risks or exposures only partially in this state the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state. [1947 c 79 § .15.12; Rem. Supp. 1947 § 45.15.12.]

48.15.130 Penalty for default. If any surplus line broker fails to file his annual statement, or fails to remit the tax provided by RCW 48.15.120, prior to the first day of April after the tax is due, he shall be liable for a fine of twenty-five dollars for each day of delinquency commencing with the first day of April. The tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the commissioner in any court of competent jurisdiction. Any fine collected by the commissioner shall be paid to the state treasurer and credited to the general fund. [1947 c 79 § .15.13; Rem. Supp. 1947 § 45.15.13.]

48.15.140 Revocation of broker's license. (1) The commissioner shall revoke any surplus line broker's license:

(a) If the broker fails to file his annual statement or to remit the tax as required by this chapter; or

(b) if the broker fails to maintain an office in this state, or to keep the records, or to allow the commissioner to examine his records as required by this chapter; or

(c) for any of the causes for which a general broker's license may be revoked.

(2) The commissioner may suspend or revoke any such license whenever he deems suspension or revocation to be for the best interests of the people of this state.

(3) The procedures provided by this code for the suspension or revocation of general brokers' licenses shall be applicable to suspension or revocation of a surplus line broker's license.

(4) No broker whose license has been so revoked or suspended shall again be so licensed within one year thereafter, nor until any fines or delinquent taxes owing by him have been paid. [1947 c 79 § .15.14; Rem. Supp. 1947 § 45.15.14.]

48.15.150 Legal process against surplus line insurer.

(1) An unauthorized insurer shall be sued, upon any cause of action arising in this state under any contract issued by it as a surplus line contract, pursuant to this chapter, in the superior court of the county in which the cause of action arose.

(2) Service of legal process against the insurer may be made in any such action by service upon the commissioner of duplicate copies of such legal process either by

a person competent to serve a summons, by registered mail or certified mail with return receipt requested. At the time of such service the plaintiff shall pay to the commissioner two dollars, taxable as costs in the action. The commissioner shall forthwith mail the documents of process served, or a true copy thereof, to the person designated by the insurer in the policy for the purpose by prepaid registered mail with return receipt requested. The insurer shall have forty days from the date of service upon the commissioner within which to plead, answer, or otherwise defend the action. Upon service of process upon the commissioner in accordance with this provision, the court shall be deemed to have jurisdiction in personam of the insurer.

(3) An unauthorized insurer issuing such policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section. Any such policy shall contain a provision stating the substance of this section, and designating the person to whom the commissioner shall mail process as provided in subsection (2) of this section. [1963 c 195 § 16; 1955 c 303 § 8; 1947 c 79 § .15.15; Rem. Supp. 1947 § 45.15.15.]

48.15.160 Exemptions from surplus line requirements. (1) The provisions of this chapter controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed agents or brokers of this state:

(a) Ocean marine and foreign trade insurances.

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in schedule interstate flight, or cargo of such aircraft, or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Agents and brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this chapter. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the examination of the commissioner. The agent or broker shall furnish to the commissioner at his request and on forms as designated and furnished by him a report of all such coverages so placed in a designated calendar year. [1949 c 190 § 22; 1947 c 79 § .15.16; Rem. Supp. 1949 § 45.15.16.]

48.15.170 Records of insureds—Inspection. Every person for whom insurance has been placed with an unauthorized insurer pursuant to or in violation of this chapter shall, upon the commissioner's order, produce for his examination all policies and other documents

evidencing the insurance, and shall disclose to the commissioner the amount of the gross premiums paid or agreed to be paid for the insurance. For each refusal to obey such order, such person shall be liable to a fine of not more than five hundred dollars. [1947 c 79 § .15.17; Rem. Supp. 1947 § 45.15.17.]

Chapter 48.16 DEPOSITS OF INSURERS

Sections

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| 48.16.010 | Deposits of insurers—In general. |
| 48.16.020 | Deposits to be held in trust. |
| 48.16.030 | Securities eligible for deposit. |
| 48.16.050 | Commissioner's receipt—Records. |
| 48.16.060 | Transfer of securities. |
| 48.16.070 | Depositaries—Designation. |
| 48.16.080 | Liability for safekeeping. |
| 48.16.090 | Dividends and substitutions. |
| 48.16.100 | Release of deposits—Generally. |
| 48.16.110 | Release of existing deposits. |
| 48.16.120 | Voluntary excess deposits. |
| 48.16.130 | Immunity from levy. |

48.16.010 Deposits of insurers—In general. The commissioner shall accept deposits of securities or funds by insurers as follows:

(1) Deposits in amount as required to be made as prerequisite to a certificate of authority to transact insurance in this state.

(2) Deposits of domestic or alien insurers in amount as required to be made by the laws of other states as prerequisite for authority to transact insurance in such other states.

(3) Deposits in amounts as result from application of the retaliatory provision, RCW 48.14.040.

(4) Deposits in other additional amounts permitted to be made by this code. [1955 c 86 § 3; 1947 c 79 § .16.01; Rem. Supp. 1947 § 45.16.01.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.020 Deposits to be held in trust. Each such deposit shall be held by the commissioner in trust for the protection of all policyholders in the United States of the insurer making it; except that deposits of alien insurers shall be so held for the security of such insurer's obligations arising out of its insurance transactions in the United States, and except as to deposits the purpose of which may be further limited pursuant to the retaliatory provision, RCW 48.14.040. [1955 c 86 § 4; 1947 c 79 § .16.02; Rem. Supp. 1947 § 45.16.02.]

48.16.030 Securities eligible for deposit. All such deposits shall consist of cash funds or public obligations as specified in RCW 48.13.040; except, that with respect to deposits held on account of registered policies heretofore issued, the commissioner may accept deposit of such other kinds of securities as are expressly required to be deposited by the terms of such policies. [1955 c 86 § 5; 1947 c 79 § .16.03; Rem. Supp. 1947 § 45.16.03.]

48.16.050 Commissioner's receipt—Records. (1) The commissioner shall deliver to the insurer a receipt for all funds and securities so deposited by it.

(2) The commissioner or the designated depository shall keep a record in permanent form of all funds and securities so deposited. [1955 c 86 § 6; 1947 c 79 § .16.05; Rem. Supp. 1947 § 45.16.05.]

48.16.060 Transfer of securities. (1) No transfer of any funds or security so held on deposit, whether voluntary or by operation of law, shall be valid unless approved in writing by the commissioner.

(2) A statement of each such transfer shall be entered on the records of the commissioner or designated depository, showing the name of the insurer from whose deposit such transfer is made, the name of the transferee, and the par value of the securities so transferred. [1955 c 86 § 7; 1947 c 79 § .16.06; Rem. Supp. 1947 § 45.16.06.]

48.16.070 Depositaries—Designation. The commissioner may designate any solvent trust company or other solvent financial institution having trust powers domiciled in this state, as the commissioner's depository to receive and hold any such deposit. Any deposit so held shall be at the expense of the insurer. [1955 c 86 § 8; 1947 c 79 § .16.07; Rem. Supp. 1947 § 45.16.07.]

48.16.080 Liability for safekeeping. The state of Washington shall be responsible for the safekeeping and return of all funds and securities deposited pursuant to this chapter with the commissioner or in any such depository so designated by him. [1955 c 86 § 9; 1947 c 79 § .16.08; Rem. Supp. 1947 § 45.16.08.]

48.16.090 Dividends and substitutions. While solvent and complying with this code an insurer shall be entitled:

(1) To collect and receive interest and dividends accruing on the securities so held on deposit for its account, and

(2) From time to time exchange and substitute for any of such securities, other securities eligible for deposit and of at least equal value. [1947 c 79 § .16.09; Rem. Supp. 1947 § 45.16.09.]

48.16.100 Release of deposits—Generally. (1) Any such required deposit shall be released in these instances only:

(a) Upon extinguishment of all liabilities of the insurer for the security of which the deposit is held, by reinsurance contract or otherwise.

(b) If any such deposit or portion thereof is no longer required under this code.

(c) If the deposit has been made pursuant to the retaliatory provision, RCW 48.14.040, it shall be released in whole or in part when no longer so required.

(d) Upon proper order of a court of competent jurisdiction the deposit shall be released to the receiver, conservator, rehabilitator, or liquidator of the insurer for whose account the deposit is held.

(2) No such release shall be made except on application to and written order of the commissioner made upon proof satisfactory to him of the existence of one of such grounds therefor. The commissioner shall have no personal liability for any such release of any deposit or part thereof so made by him in good faith.

(3) All releases of deposits or any part thereof shall be made to the person then entitled thereto upon proof of title satisfactory to the commissioner.

(4) Deposits held on account of title insurers are subject further to the provisions of chapter 48.29 RCW. [1947 c 79 § .16.10; Rem. Supp. 1947 § 45.16.10.]

48.16.110 Release of existing deposits. Any part of any deposit of an insurer held by the commissioner which is in amount in excess of the deposit required or permitted to be made by such insurer under this code, shall, upon written order of the commissioner, be released; except, that no deposit held on account of any registered policies heretofore issued by the insurer shall be released except in accordance with the conditions under which such deposit was made. [1955 c 86 § 10; 1947 c 79 § .16.11; Rem. Supp. 1947 § 45.16.11.]

48.16.120 Voluntary excess deposits. An insurer may deposit and maintain on deposit with the commissioner funds and eligible securities in amount exceeding its required deposit under this code by not more than one hundred thousand dollars, for the purpose of absorbing fluctuations in the value of securities held in its required deposit, and to facilitate the exchange and substitution of such required securities. During the solvency of the insurer any such excess deposit or any part thereof shall be released to it upon its request. During the insolvency of the insurer such excess deposit shall be released only as provided in RCW 48.16.100. [1955 c 86 § 11; 1947 c 79 § .16.12; Rem. Supp. 1947 § 45.16.12.]

48.16.130 Immunity from levy. No judgment creditor or other claimant of an insurer shall levy upon any deposit held pursuant to this chapter, or upon any part thereof. [1947 c 79 § .16.13; Rem. Supp. 1947 § 45.16.13.]

Chapter 48.17

AGENTS, BROKERS, SOLICITORS, AND ADJUSTERS

Sections

- 48.17.010 "Agent" defined.
- 48.17.020 "Broker" defined.
- 48.17.030 "Solicitor" defined.
- 48.17.040 Service representatives.
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- 48.17.060 License required.
- 48.17.070 General qualifications for license.
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- 48.17.540 Procedure to suspend, revoke or refuse—Effect of conviction of felony.
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Agent on commission not subject to unemployment compensation: RCW 50.04.230.

Binders: RCW 48.18.230.

Illegal inducements: RCW 48.30.150.

Rebating: RCW 48.30.140.

"Twisting" prohibited: RCW 48.30.180.

Unfair practices: Chapter 48.30 RCW.

48.17.010 "Agent" defined. "Agent" means any person appointed by an insurer to solicit applications for insurance on its behalf, and if authorized so to do, to effectuate and countersign insurance contracts except as to life or disability insurances, and to collect premiums on insurances so applied for or effectuated. [1947 c 79 § .17.01; Rem. Supp. 1947 § 45.17.01.]

48.17.020 "Broker" defined. "Broker" means any person who, on behalf of the insured, for compensation as an independent contractor, for commission, or fee, and not being an agent of the insurer, solicits, negotiates, or procures insurance or reinsurance or the renewal or continuance thereof, or in any manner aids therein, for insureds or prospective insureds other than himself. [1947 c 79 § .17.02; Rem. Supp. 1947 § 45.17.02.]

48.17.030 "Solicitor" defined. "Solicitor" means an individual authorized by an agent or broker to solicit applications for insurance as a representative of such agent or broker and to collect premiums in connection therewith. An individual employed by, and devoting full

time to clerical work with incidental taking of insurance applications and receiving premiums in the office of the agent or broker is not deemed to be a solicitor if his compensation is not related to the volume of such applications, insurances, or premiums. [1947 c 79 § .17.03; Rem. Supp. 1947 § 45.17.03.]

48.17.040 Service representatives. Individuals other than an officer, manager, or general agent of the insurer, employed on salary by an insurer or general agent to work with and assist agents in soliciting, negotiating, and effectuating insurance in such insurer or in the insurers represented by the general agent, are deemed to be service representatives and are not required to be licensed. [1947 c 79 § .17.04; Rem. Supp. 1947 § 45.17.04.]

48.17.050 "Adjuster" defined. (1) "Adjuster" means any person who, for compensation as an independent contractor or as an employee of an independent contractor, or for fee or commission, investigates or reports to his principal relative to claims arising under insurance contracts, on behalf solely of either the insurer or the insured. An attorney at law who adjusts insurance losses from time to time incidental to the practice of his profession, or an adjuster of marine losses, or a salaried employee of an insurer or of a general agent, is not deemed to be an "adjuster" for the purposes of this chapter.

(2) "Independent adjuster" means such an adjuster representing the interests of the insurer.

(3) "Public adjuster" means an adjuster employed by and representing solely the financial interests of the insured named in the policy. [1947 c 79 § .17.05; Rem. Supp. 1947 § 45.17.05.]

48.17.060 License required. (1) No person shall in this state act as or hold himself out to be an agent, broker, solicitor, or adjuster unless then licensed therefor by this state.

(2) No agent, solicitor, or broker shall solicit or take applications for, procure, or place for others any kind of insurance for which he is not then licensed.

(3) This section shall not apply with respect to any person securing and forwarding information required for the purposes of group insurance covering the unpaid balance, or remaining payments proposed to be made, in connection with the purchase of merchandise or securities, and where no commission or other compensation is payable on account of such insurance to such person.

(4) Any person violating this section shall be liable to a fine of not to exceed five hundred dollars and imprisonment for not to exceed six months for each instance of such violation. [1955 c 303 § 9; 1947 c 79 § .17.06; Rem. Supp. 1947 § 45.17.06.]

48.17.070 General qualifications for license. For the protection of the people of this state the commissioner shall not issue or renew any such license except in compliance with this chapter, nor to, nor to be exercised by, any person found by him to be untrustworthy,

or incompetent, or who has not established to the satisfaction of the commissioner that he is qualified therefor in accordance with this chapter. [1947 c 79 § .17.07; Rem. Supp. 1947 § 45.17.07.]

48.17.080 "Controlled business" disqualification. (1) The commissioner shall not grant an agent's, solicitor's, or broker's license to any person if the commissioner has reasonable cause to believe that:

(a) During either of the two calendar years immediately preceding the request for renewal of any such license the aggregate amount of commissions represented by the controlled business procured by or through the licensee exceeded the aggregate amount of commissions represented by all other insurance business procured by or through him; or

(b) the circumstances of the applicant for such license or of any such licensee are such as to cause the commissioner reasonably to believe that during the twelve-month period immediately following issuance or renewal of the license, if so issued or renewed, the aggregate amount of commissions to be represented by such controlled business would exceed the aggregate amount of commissions to be represented by all other insurance business to be procured by or through such applicant or licensee.

(2) "Controlled business" means insurance procured or to be procured by or through such person upon:

(a) His own life, person, or property or those of his spouse or relatives by blood or marriage to the second degree;

(b) the life, person, or property of his employer, or his firm, or of any officer, director, stockholder, or member of his employer or firm, other than members of mutual insurers, or of any spouse of such employer, officer, director, stockholder, or member;

(c) the life, person, or property of his ward, or his employees; or upon persons or property under his supervision or control as trustee under any indenture or decree, or as administrator or executor of any estate.

(3) The vendor who is title holder of property being sold under an installment purchase contract shall not be deemed to be the owner of such property for the purposes of this section. [1947 c 79 § .17.08; Rem. Supp. 1947 § 45.17.08.]

48.17.090 Application for license. (1) Application for any such license shall be made to the commissioner upon forms as prescribed and furnished by him. As a part of or in connection with any such application the applicant shall furnish information concerning his identity, including his fingerprints, personal history, experience, business record, purposes, and other pertinent facts, as the commissioner may reasonably require.

(2) If the applicant is a firm or corporation, the application shall show, in addition, the names of all members and officers, and shall designate each individual who is to exercise the powers to be conferred by the license upon such firm or corporation. The commissioner shall require each such individual to furnish information to him as though for an individual license.

(3) Any person wilfully misrepresenting any fact required to be disclosed in any such application shall be liable to penalties as provided by this code. [1967 c 150 § 15; 1947 c 79 § .17.09; Rem. Supp. 1947 § 45.17.09.]

48.17.100 One filing of personal data sufficient. (1) The filing of personal data by an individual in connection with one application for an agent's license shall be sufficient, regardless of the number of insurers to be represented by the agent or the number of subsequent applications by the same applicant.

(2) The commissioner may, for his information from time to time require any licensed agent, or solicitor, or broker, or adjuster, to supply him with the information called for in an application for license. [1947 c 79 § .17.10; Rem. Supp. 1947 § 45.17.10.]

48.17.110 Examination of applicants. (1) Each applicant for license as agent, broker, solicitor, or adjuster shall prior to the issuance of any such license, personally take and pass to the satisfaction of the examining authority, an examination given as a test of his qualifications and competence, but this requirement shall not apply to:

(a) Applicants for limited licenses under RCW 48.17.190, at the discretion of the commissioner.

(b) Applicants who within the five-year period next preceding date of application have been licensed in this state under a license requiring qualifications similar to qualifications required by the license applied for or who have successfully completed a course of study recognized as a mark of distinction by the insurance industry and who are deemed by the commissioner to be fully qualified and competent.

(c) Applicants for license as nonresident agent or as nonresident broker or as nonresident adjuster who are duly licensed in their state of residence and who are deemed by the commissioner to be fully qualified and competent for a similar license in this state.

(d) Applicants for an agent's or solicitor's license covering the same kinds of insurance as an agent's or solicitor's license then held by them.

(e) Applicants for an adjuster's license who for a period of one year next preceding the date of application have been a full time salaried employee of an insurer or of a general agent to adjust, investigate, or report claims arising under insurance contracts.

(2) Any person licensed as an insurance broker by this state prior to June 8, 1967, who is otherwise qualified to be a licensed insurance broker, shall be entitled to renew his broker's license by payment of the applicable fee for such of the broker's licenses authorized by RCW 48.17.240, as he shall elect, without taking any additional examination, except as provided in subsection (3).

(3) The commissioner may at any time require any licensed agent, broker, solicitor, or adjuster to take and successfully pass an examination testing his competence and qualifications as a condition to the continuance or renewal of his license, if the licensee has been guilty of violation of this code, or has so conducted his affairs

under his license as to cause the commissioner reasonably to desire further evidence of his qualifications. [1967 c 150 § 16; 1965 ex.s. c 70 § 19; 1963 c 195 § 17; 1955 c 303 § 10; 1949 c 190 § 23; 1947 c 79 § .17.11; Rem. Supp. 1949 § 45.17.11.]

48.17.120 Scope of examinations. (1) Each such examination shall be of sufficient scope reasonably to test the applicant's knowledge relative to the kinds of insurance which may be dealt with under the license applied for, and of the duties and responsibilities of, and laws of this state applicable to, such a licensee.

(2) Examination as to ocean marine and related coverages may be waived by the commissioner as to any applicant deemed by the commissioner to be qualified by past experience to deal in such insurances.

(3) The commissioner shall prepare and make available to insurers, general agents, brokers, agents, and applicants a printed manual specifying in general terms the subjects which may be covered in any examination for a particular license. [1967 c 150 § 17; 1955 c 303 § 11; 1947 c 79 § .17.12; Rem. Supp. 1947 § 45.17.12.]

48.17.130 Examinations—Form, time of, fee. (1) The answers of the applicant to any such examination shall be written by the applicant under the examining authority's supervision, and any such written examination may be supplemented by oral examination at the discretion of the examining authority.

(2) Examinations shall be given at such times and places within this state as the examining authority deems necessary reasonably to serve the convenience of both the examining authority and applicants.

(3) The examining authority may require a waiting period of reasonable duration before giving a new examination to an applicant who has failed to pass a previous similar examination.

(4) For each examination taken, the commissioner shall collect in advance the fee provided in RCW 48.14.010. [1967 c 150 § 18; 1947 c 79 § .17.13; Rem. Supp. 1947 § 45.17.13.]

48.17.135 Insurance advisory examining board—Members—Appointment—Qualifications—Terms—Meetings, quorum—Powers and duties—Removal of members—Compensation. (1) There is hereby created an insurance advisory examining board, hereafter referred to as the examining board or the board.

(2) The examining board shall consist of seven members, the commissioner who shall serve ex officio as a member and shall act as chairman, and six members appointed by the commissioner. Appointments shall be made within thirty days after June 8, 1967.

(3) The insurance commissioner as chairman shall keep a record of all proceedings of the board, send out notices of meetings of the board, draft rules and regulations of the board, and perform such other duties as may be required.

(4) The members of the board appointed by the commissioner shall have been licensed insurance agents or brokers of this state for at least five years prior to

their appointments, three of whom shall have been engaged in the life or disability fields and the remaining three in other insurance fields. Consistent with the representation on the board, it may function as two separate committees, at which meetings the commissioner shall also preside.

(5) The first terms for members of the examining board appointed by the commissioner shall be as follows: Two members for one year; two members for two years; two members for three years. Thereafter, the terms shall be for two years and until their successors are appointed and qualified.

(6) The examining board, or any committee of the board, shall meet at the call of the commissioner. A majority of the members of the board or of a committee shall constitute a quorum for the transaction of business by the board or a committee of the board.

(7) The board shall have the advisory power:

(a) To recommend general policy concerning the scope, contents, procedure and conduct of examinations to be given for respective licenses as agent, broker and solicitor.

(b) To recommend the questions comprising each particular such examination and from time to time to change such questions as the board deems advisable, and where examinations are composed by the board results of these examinations shall be evaluated by the board.

(c) To review other state insurance examination papers and the grading thereof.

(d) To recommend the scope and contents of material furnished agent, broker or solicitor examination applicants by the commissioner under RCW 48.17.120 for the purpose of preparing for any such examination.

(e) To recommend rules and regulations for the procedure to be followed in the conduct of such examinations, including, but not limited to, application for examination, frequency and place of examinations, minimum waiting period before reexamination, monitoring, and the safeguarding of examination questions and papers. The board shall file copies of all such rules and regulations, and of all amendments or modifications thereof, with the commissioner and with the code reviser for public inspection and information.

(f) To make such recommendations to the commissioner in regard to the administration of the examination requirement as the board from time to time deems appropriate.

(8) Members may be removed by the commissioner for any cause which unreasonably interferes with the proper discharge of the responsibilities of the board or any member thereof. Any vacancy shall be filled by the commissioner within ninety days after it occurs by appointment for the remainder of the unexpired term.

(9) Appointed members of the examining board shall receive compensation from the appropriation to the insurance commissioner at the rate of twenty-five dollars per day while discharging their duties as directed and approved by the commissioner, and shall be reimbursed for their necessary travel expenses incurred in the actual performance of their duties at the rate provided by statute for state employees: *Provided, however*, That

the powers and recommendations of the examining board shall be advisory only. [1967 c 150 § 14.]

48.17.150 Agent's and broker's qualifications. (1) To qualify for an agent's or broker's license an applicant must otherwise comply with this code therefor and must

(a) be eighteen years of age or over, if an individual;

(b) be a bona fide resident of and actually reside in this state, or if a corporation, be other than an insurer and maintain a lawfully established place of business in this state, except as provided in RCW 48.17.330;

(c) be empowered to be an agent or broker, as the case may be, under its members' agreement, if a firm, or by its articles of incorporation, if a corporation;

(d) successfully pass any examination as required under RCW 48.17.110;

(e) be a trustworthy person;

(f) not intend to use or use the license for the purpose principally of writing controlled business, as defined in RCW 48.17.080;

(g) if for an agent's license, be appointed as its agent by one or more authorized insurers, subject to issuance of the license;

(h) if for broker's license, have had at least two years experience either as an agent, solicitor, adjuster, general agent, broker, or as an employee of insurers or representatives of insurers, and special education or training of sufficient duration and extent reasonably to satisfy the commissioner that he possesses the competence necessary to fulfill the responsibilities of broker.

(2) If the commissioner finds that the applicant is so qualified and that the license fee has been paid, he shall issue the license. Otherwise, the commissioner shall refuse to issue the license. [1971 ex.s. c 292 § 47; 1967 c 150 § 19; 1961 c 194 § 4; 1947 c 79 § .17.15; Rem. Supp. 1947 § 45.17.15.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

48.17.160 Appointment of agents—Revocation. (1) Each insurer on appointing an agent in this state shall file written notice thereof in duplicate with the commissioner on forms as prescribed and furnished by him, and shall pay the filing fee therefor as provided in RCW 48.14.010. If then licensed, or as soon as licensed, the commissioner shall mail one copy of the appointment to the agent.

(2) Each such appointment shall continue in force until:

(a) The commissioner notifies the insurer that the person so appointed is no longer licensed as an agent by this state; or

(b) the appointment is revoked by the insurer by written notice of such revocation to the agent. The insurer shall forthwith file a duplicate copy of such notice of revocation with the commissioner. No fee shall be charged for filing such copy.

(3) Revocation of an appointment by the insurer shall be deemed to be effective as of the date designated in the notice as being the effective date if the notice is actually received by the agent prior to such designated date; otherwise, as of the earlier of the following dates:

(a) The date such notice of revocation was received by the agent.

(b) The date such notice, if mailed to the agent at his last address of record with the insurer, in due course should have been received by the agent. [1967 c 150 § 20; 1959 c 225 § 6; 1955 c 303 § 13; 1947 c 79 § .17.16; Rem. Supp. 1947 § 45.17.16.]

48.17.170 Content of agents', brokers', and solicitors' licenses. (1) Agents', solicitors', and brokers' licenses shall be in form as the commissioner prescribes, and shall set forth:

(a) The name and address of the licensee; or if he is required to have a place of business, the address of the place of business;

(b) if the agent or broker is a firm or corporation, the name of each individual authorized to exercise the powers conferred by the license;

(c) the kind or kinds of insurance the licensee is thereby licensed to handle;

(d) if an agent's license for life or disability insurances only, the name of the insurer as to which he is so licensed, and a separate license shall be required as to each such insurer;

(e) if a solicitor's license, the name and address of the agent or broker represented by the solicitor;

(f) the conditions under which the license is granted;

(g) the date of issuance and date of expiration of the license.

(2) The commissioner is not required to issue a separate license to each agent licensed for life or disability insurances only. In lieu thereof he may issue to the insurer his license certificate setting forth the names and addresses of the insurer's agents so licensed in this state. Each such license certificate shall be serially numbered and shall constitute official evidence of the licensing of each licensee designated therein. Any such insurer may furnish its agents so licensed with evidence of authority to represent the insurer, upon such form as is submitted to and approved by the commissioner. [1947 c 79 § .17.17; Rem. Supp. 1947 § 45.17.17.]

48.17.180 Licenses to firms and corporations. (1) A firm or corporation shall not be licensed as an agent or broker unless each individual to be empowered and designated in the license to exercise the powers conferred thereby is qualified as though he were the sole individual to be so empowered. A nonresident of this state shall not be so designated or empowered. Exercise or attempted exercise of such powers by an individual not so designated, with the knowledge or consent of the licensee, shall constitute cause for the revocation or suspension of the license.

(2) Licenses shall be issued in a trade name only upon proof satisfactory to the commissioner that the trade name has been lawfully registered. [1947 c 79 § .17.18; Rem. Supp. 1947 § 45.17.18.]

48.17.190 Limited licenses. The commissioner may issue limited licenses to the following:

(1) Persons selling transportation tickets of a common carrier of persons or property who shall act as

such agents only as to transportation ticket policies of disability insurance or baggage insurance on personal effects.

(2) Compensated master policyholders of credit life and credit accident and health insurance, retail dealers compensated by any such master policyholders, or the authorized representative(s) of either. [1967 c 150 § 21; 1947 c 79 § .17.19; Rem. Supp. 1947 § 45.17.19.]

48.17.200 Number of licenses required—Agent, broker. (1) An agent appointed by an insurer for life insurance, or for life and disability insurances, or for disability insurance only, shall be separately licensed as to such insurer.

(2) An agent is required to have but one license inclusive of all other kinds or combination of kinds of insurance he is licensed to handle, regardless of the number of insurers for whom he is appointed as agent for such insurances or any of them.

(3) An agent or broker shall have separate and additional license or licenses as to each office location in excess of one, maintained by him in this state for the transaction of business as such agent or broker. [1955 c 303 § 14; 1947 c 79 § .17.20; Rem. Supp. 1947 § 45.17.20.]

48.17.210 Minimum license combinations. Except as provided in RCW 48.17.190, an agent's license shall not be issued unless it includes, and the applicant is qualified for, one or more of the following kinds of insurance:

(1) Casualty.

(2) Disability.

(3) Life.

(4) Marine and transportation.

(5) Property.

(6) Surety.

(7) Vehicle. [1947 c 79 § .17.21; Rem. Supp. 1947 § 45.17.21.]

48.17.230 Rejected business—Agent may place. A licensed agent appointed by an insurer as to life or disability insurances may, if with the knowledge and consent of such insurer, place any portion of a life or disability risk which has been rejected by such insurer, with other authorized insurers without being licensed as to such other insurers. [1947 c 79 § .17.23; Rem. Supp. 1947 § 45.17.23.]

48.17.240 Scope of broker's license. A broker's license may be issued to cover the following lines of insurance:

(a) All lines of insurance; or

(b) All lines except life, which shall be designated as a casualty–property broker's license; or

(c) Life and disability only. [1967 c 150 § 22; 1947 c 79 § .17.24; Rem. Supp. 1947 § 45.17.24.]

48.17.250 Broker's bond. (1) Every applicant for a broker's license or for the renewal of a broker's license existing on the effective date of this code shall file with

the application or request for renewal and shall thereafter maintain in force while so licensed a bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of twenty-five hundred dollars. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the payment of twenty-five hundred dollars. The bond shall be contingent on the accounting by the broker to any person requesting the broker to obtain insurance, for moneys or premiums collected in connection therewith.

(2) Any such bond shall remain in force until the surety is released from liability by the commissioner, or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon thirty days advance notice in writing filed with the commissioner. [1947 c 79 § .17.25; Rem. Supp. 1947 § 45.17.25.]

48.17.260 Broker's authority—Commissions. (1) A broker, as such, is not an agent or other representative of an insurer, and does not have power, by his own acts, to bind the insurer upon any risk or with reference to any insurance contract.

(2) An insurer or agent shall have the right to pay to a broker licensed under this code, or under the laws of any other state or province, and such broker shall have the right to receive from the insurer or agent, the customary commissions upon insurances placed in the insurer by the broker. [1949 c 190 § 24; 1947 c 79 § .17.26; Rem. Supp. 1949 § 45.17.26.]

48.17.270 Agent-broker combinations. A licensed agent may be licensed as a broker and be a broker as to insurers for which he is not then licensed as agent. A licensed broker may be licensed as and be an agent as to insurers appointing him as agent. The sole relationship between a broker and an insurer as to which he is licensed as an agent shall, as to transactions arising during the existence of such agency appointment, be that of insurer and agent. [1947 c 79 § .17.27; Rem. Supp. 1947 § 45.17.27.]

48.17.280 Solicitor's qualifications. The commissioner shall license as a solicitor an individual only who meets the following requirements:

(1) Is a resident of this state.

(2) Intends to and does make the soliciting and handling of insurance business under his license his principal vocation.

(3) Is to represent and be employed by but one licensed agent or broker.

(4) Has passed any examination as required under this chapter.

(5) Is otherwise qualified under this code. [1947 c 79 § .17.28; Rem. Supp. 1947 § 45.17.28.]

48.17.290 Solicitor's license—Application. The commissioner shall issue a solicitor's license only upon application by the applicant and the request of the agent or broker to be represented, upon such forms as

the commissioner shall prescribe and furnish. [1947 c 79 § .17.29; Rem. Supp. 1947 § 45.17.29.]

48.17.300 Solicitor's license fee—Custody—Cancellation. (1) The fee for issuance or renewal of a solicitor's license shall be paid by the agent or broker by whom the solicitor is employed.

(2) The solicitor's license shall be delivered to and shall remain in the possession of the employing agent or broker. Upon termination of such employment, the license shall likewise terminate and shall be returned to the commissioner for cancellation. [1947 c 79 § .17.30; Rem. Supp. 1947 § 45.17.30.]

48.17.310 Limitations upon solicitors. (1) A solicitor's license shall not cover any kind of insurance for which the agent or broker by whom he is employed is not then licensed.

(2) A solicitor shall not have power to bind an insurer upon or with reference to any risk or insurance contract, or to countersign insurance contracts.

(3) Any individual while licensed as a solicitor shall not be licensed as an agent or broker. [1947 c 79 § .17.31; Rem. Supp. 1947 § 45.17.31.]

48.17.320 Responsibility of employing agent or broker. All business transacted by a solicitor under his license shall be in the name of the agent or broker by whom he is employed and the agent or broker shall be responsible for all acts or omissions of the solicitor within the scope of such employment. [1947 c 79 § .17.32; Rem. Supp. 1947 § 45.17.32.]

48.17.330 Nonresident agents and brokers—Reciprocity. (1) The commissioner may license as an agent or as a broker, a person who is otherwise qualified therefor under this code but who is not a resident of or domiciled in this state, if by the laws of the state or province of his residence or domicile a similar privilege is extended to residents of or corporations domiciled in this state.

(2) Any such licensee shall be subject to the same obligations and limitations, and to the commissioner's supervision as though resident or domiciled in this state, subject to RCW 48.14.040.

(3) No such person shall be so licensed unless he files the power of attorney provided for in RCW 48.17.340, and, if a corporation, it must have complied with the laws of this state governing the admission of foreign corporations. [1973 1st ex.s. c 107 § 1; 1955 c 303 § 28; 1947 c 79 § .17.33; Rem. Supp. 1947 § 45.17.33.]

Severability—1973 1st ex.s. c 107: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 107 § 5.]

48.17.340 Service of process against nonresident agent or broker. (1) Each licensed nonresident agent or broker shall appoint the commissioner as his attorney to receive service of legal process issued against the agent or broker in this state upon causes of action arising within this state. Service upon the commissioner as

attorney shall constitute effective legal service upon the agent or broker.

(2) The appointment shall be irrevocable for as long as there could be any cause of action against the agent or broker arising out of his insurance transactions in this state.

(3) Duplicate copies of such legal process against such agent or broker shall be served upon the commissioner either by a person competent to serve a summons, or through registered mail. At the time of such service the plaintiff shall pay to the commissioner two dollars, taxable as costs in the action.

(4) Upon receiving such service, the commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant agent or broker at his last address of record with the commissioner.

(5) The commissioner shall keep a record of the day and hour of service upon him of all such legal process. No proceedings shall be had against the defendant agent or broker, and such defendant shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner. [1947 c 79 § .17.34; Rem. Supp. 1947 § 45.17.34.]

48.17.380 Adjusters—Qualifications for license.

The commissioner shall license as an adjuster only an individual who has otherwise complied with this code therefor and who has furnished evidence satisfactory to the commissioner that he is qualified as follows:

(1) Is eighteen or more years of age.

(2) Is a bona fide resident of this state, or is a resident of a state which will permit residents of this state to act as adjusters in such other state.

(3) Is a trustworthy person.

(4) Has had experience or special education or training with reference to the handling of loss claims under insurance contracts, of sufficient duration and extent reasonably to make him competent to fulfill the responsibilities of an adjuster.

(5) Has successfully passed any examination as required under this chapter.

(6) If for a public adjuster's license, has filed the bond required by RCW 48.17.430. [1971 ex.s. c 292 § 48; 1947 c 79 § .17.38; Rem. Supp. 1947 § 45.17.38.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

48.17.390 Adjusters—Separate licenses. The commissioner may license an individual as an independent adjuster or as a public adjuster, and separate licenses shall be required for each type of adjuster. An individual may be concurrently licensed under separate licenses as an independent adjuster and as a public adjuster. The full license fee shall be paid for each such license. [1947 c 79 § .17.39; Rem. Supp. 1947 § 45.17.39.]

48.17.400 Adjuster's license—Content. The commissioner shall prescribe the form of adjuster's license, and which shall contain:

(1) The name of the adjuster, and the address of his place of business;

(2) A statement as to whether he is so licensed as an independent adjuster or as a public adjuster;

(3) Date of issuance and date of expiration of the license;

(4) Other statements proper to the purposes of the license. [1947 c 79 § .17.40; Rem. Supp. 1947 § 45.17.40.]

48.17.410 Authority of adjuster. An adjuster shall have authority under his license only to investigate or report to his principal upon claims as limited under RCW 48.17.050 on behalf only of the insurers if licensed as an independent adjuster, or on behalf only of insureds if licensed as a public adjuster. An adjuster licensed concurrently as both an independent and a public adjuster shall not represent both the insurer and the insured in the same transaction. [1947 c 79 § .17.41; Rem. Supp. 1947 § 45.17.41.]

48.17.420 Agent may adjust—Nonresident adjusters. (1) On behalf of and as authorized by an insurer for which he is licensed as agent, an agent may from time to time act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster.

(2) No license by this state shall be required of a nonresident independent adjuster, for the adjustment in this state of a single loss, or of losses arising out of a catastrophe common to all such losses. [1947 c 79 § .17.42; Rem. Supp. 1947 § 45.17.42.]

48.17.430 Public adjuster's bond. (1) Prior to the issuance of a license as public adjuster, the applicant therefor shall file with the commissioner and shall thereafter maintain in force while so licensed a surety bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of twenty-five hundred dollars. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the payment of twenty-five hundred dollars. The bond shall be contingent on the accounting by the adjuster to any insured whose claim he is handling, for moneys or any settlement received in connection therewith.

(2) Any such bond shall remain in force until the surety is released from liability by the commissioner, or until canceled by the surety. Without prejudice to any liability accrued prior to cancellation, the surety may cancel a bond upon thirty days advance notice in writing filed with the commissioner.

(3) Such bond shall be required of any adjuster acting as a public adjuster as of the effective date of this code, or thereafter under any unexpired license heretofore issued. [1947 c 79 § .17.43; Rem. Supp. 1947 § 45.17.43.]

48.17.440 Report of losses. (1) Every adjuster who investigates any fire loss claim under any insurance contract covering property located in this state, shall

promptly report to the commissioner any facts or circumstances found and from which he believes fraud has been committed or attempted.

(2) Upon completing the adjustment of any fire loss requiring claim payments aggregating one hundred dollars or more, for damage to or destruction of property located in this state, under any policy or policies issued by an unauthorized insurer, an adjuster shall promptly report the details thereof to the commissioner, upon forms prescribed and furnished by him. Such report shall state the names of the insurers and insured involved, amount of insurance on the property carried in each insurer, the amount of the claim and the amount paid by each insurer on account thereof, the circumstances of the loss, and other information as the commissioner requests.

(3) Upon the commissioner's request each adjuster shall in similar manner report to the commissioner relative to losses and claims investigated or adjusted, and arising under other insurance contracts issued by unauthorized insurers. [1947 c 79 § .17.44; Rem. Supp. 1947 § 45.17.44.]

48.17.450 Place of business. Every licensed agent, broker, and adjuster, other than an agent licensed for life or disability insurances only, shall have and maintain in this state, or, if a nonresident agent or nonresident broker, in the state of his domicile, a place of business accessible to the public. Such place of business shall be that wherein the agent principally conducts transactions under his licenses. The address of his place of business shall appear on all licenses of the licensee, and the licensee shall promptly notify the commissioner of any change thereof. If the licensee maintains more than one place of business in this state, he shall obtain a duplicate of his license or licenses for each additional such place, and shall pay the full fee therefor. [1953 c 197 § 6; 1947 c 79 § .17.45; Rem. Supp. 1947 § 45.17.45.]

48.17.460 Display of license. (1) The license or licenses of each agent, other than licenses as to life or disability insurances only, or of each broker or adjuster shall be displayed in a conspicuous place in that part of his place of business which is customarily open to the public.

(2) The license of a solicitor shall be so displayed in the place of business of the agent or broker by whom he is employed. [1947 c 79 § .17.46; Rem. Supp. 1947 § 45.17.46.]

48.17.470 Records of agents, brokers, adjusters. (1) Every agent, or broker, or adjuster shall keep at his address as shown on his license, a record of all transactions consummated under his license. This record shall be in organized form and shall include:

- (a) If an agent or broker,
 - (i) a record of each insurance contract procured, issued, or countersigned, together with the names of the insurers and insureds, the amount of premium paid or to be paid, and a statement of the subject of the insurance;

- (ii) the names of any other licensees from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid.

(b) If an adjuster, a record of each investigation or adjustment undertaken or consummated, and a statement of any fee, commission, or other compensation received or to be received by the adjuster on account of such investigation or adjustment.

(c) Such other and additional information as shall be customary, or as may reasonably be required by the commissioner.

(2) All such records as to any particular transaction shall be kept available and open to the inspection of the commissioner at any business time during the five years immediately after the date of the completion of such transaction.

(3) This section shall not apply as to life or disability insurances. [1947 c 79 § .17.47; Rem. Supp. 1947 § 45.17.47.]

48.17.475 Licensee to reply promptly to inquiry by commissioner. Every insurance agent, broker, adjuster, or other person licensed under this chapter shall promptly reply in writing to an inquiry of the commissioner relative to the business of insurance. [1967 c 150 § 13.]

48.17.480 Reporting and accounting for premiums. (1) An agent or any other representative of an insurer involved in the procuring or issuance of an insurance contract shall report to the insurer the exact amount of consideration charged as premium for such contract, and such amount shall likewise be shown in the contract and in the records of the agent. Each wilful violation of this provision shall constitute a misdemeanor.

(2) All funds representing premiums or return premiums received by an agent, solicitor or broker, shall be so received in his fiduciary capacity, and shall be promptly accounted for and paid to the insured, insurer, or agent as entitled thereto.

(3) Any agent, solicitor, or broker who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use, shall be guilty of larceny by embezzlement, and shall be punished as provided in the criminal statutes of this state. [1947 c 79 § .17.48; Rem. Supp. 1947 § 45.17.48.]

48.17.490 Sharing commissions. (1) No agent, general agent, solicitor, or broker shall compensate or offer to compensate in any manner any person other than an agent, general agent, solicitor, or broker, licensed in this or any other state or province, for procuring or in any manner helping to procure applications for or to place insurance in this state. This provision shall not prohibit the payment of compensation not contingent upon volume of business transacted, in the form of salaries to the regular employees of such agent, general agent, solicitor or broker.

(2) No such licensee shall be promised or allowed any compensation on account of the procuring of applications for or the placing of kinds of insurance which he himself is not then licensed to procure or place.

(3) The commissioner shall suspend or revoke the licenses of all licensees participating in any violation of this section. [1947 c 79 § .17.49; Rem. Supp. 1947 § 45.17.49.]

48.17.500 Expiration and renewal of licenses. (1) Agents' license for life, or life and disability, or disability insurances only shall expire as at 12:01 a.m. o'clock on the first day of October next following date of issuance.

(2) All brokers', solicitors', and adjusters' licenses shall expire as at 12:01 a.m. o'clock on the first day of April next following date of issuance.

(3) Agents' licenses for all other kinds of insurance or combinations thereof shall expire as at 12:01 a.m. o'clock on the first day of April three years after the first day of April nearest to the date of issuance of the license.

(4) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any license as provided in this code, any such license may be renewed into another like period by filing with the commissioner on or before the expiration date a written request, by or on behalf of the licensee, for such renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010. An agent or broker shall make and file renewal requests on behalf of his solicitors.

(5) If request and fee for renewal of license is filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of renewal license or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed order of such refusal to the licensee. Any request for renewal not so filed until after date of expiration may be considered by the commissioner as an application for a new license.

(6) As to all licenses, if request for renewal of license or payment of the license fee is not received by the commissioner prior to expiration date as required under subsection (4) the applicant for renewal of license shall pay to the commissioner and the commissioner shall collect, in addition to the regular license fee, a surcharge for such license as follows: For the first thirty days or part thereof of delinquency the surcharge shall be fifty percent of the license fee; for all delinquencies extending more than thirty days, the surcharge shall be one hundred percent of the license fee. This subsection shall not be deemed to exempt any person from any penalty provided by law for transacting business without a valid and subsisting license, or affect the commissioner's right, at his discretion, to consider such delinquent application as one for a new license. [1965 ex.s. c 70 § 20; 1957 c 193 § 9; 1953 c 197 § 7; 1947 c 79 § .17.50; Rem. Supp. 1947 § 45.17.50.]

48.17.510 Temporary licenses. (1) The commissioner may issue an agent's or broker's temporary license in the following circumstances:

(a) To applicants for licensing as agent of a life insurer, and pending taking of the examination provided for in RCW 48.17.110 within ninety days from date of

license without privilege of extension, notwithstanding the provisions of RCW 48.17.520(1).

(b) To the surviving spouse or next of kin or to the administrator or executor, or the employee of the administrator or executor, of a licensed agent or broker becoming deceased.

(c) To the spouse, next of kin, employee, or legal guardian of a licensed agent or broker becoming disabled because of sickness, insanity, or injury.

(d) To a surviving member of a firm or surviving officer or employee of a corporation licensed as agent or broker upon the death of an individual designated in the firm or corporation's license to exercise powers thereunder.

(2) An individual to be eligible for any such temporary license must be qualified as for a permanent license except as to experience, training, or the taking of any examination.

(3) Any fee paid to the commissioner for issuance of a temporary license as specified in RCW 48.14.010 shall be credited toward the fee required for a permanent license which is issued to replace the temporary license prior to the expiration of such temporary license. [1955 c 303 § 15; 1953 c 197 § 8; 1947 c 79 § .17.51; Rem. Supp. 1947 § 45.17.51.]

48.17.520 Temporary licenses—Duration—Limitations. (1) No such temporary license shall be effective for more than ninety days in any twelve month period, subject to extension for an additional period of not more than ninety days at the commissioner's discretion and for good cause shown. The commissioner may refuse so to license again any person who has previously been so licensed.

(2) An individual requesting temporary agent's license on account of death or disability of an agent, shall not be so licensed for any insurer as to which such agent was not licensed at the time of death or commencement of disability.

(3) No person writing or renewing any "controlled business," as defined in this chapter, under any temporary license, shall be entitled to receive any commission or other compensation on account thereof unless and until prior to the expiration of the temporary license such person fully qualifies for and receives a permanent license in replacement of the temporary license. Otherwise, the licensee under such temporary license may exercise the same powers as under a like permanent license. [1953 c 197 § 9; 1947 c 79 § .17.52; Rem. Supp. 1947 § 47.17.52.]

48.17.530 Refusal, suspension, revocation of licenses. (1) The commissioner may suspend, revoke, or refuse to issue or renew any license which is issued or may be issued under this chapter or any surplus line broker's license for any cause specified in any other provision of this code, or for any of the following causes:

(a) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner.

(b) If the licensee or applicant wilfully violates or knowingly participates in the violation of any provision

of this code or any proper order or regulation of the commissioner.

(c) If the licensee or applicant has obtained or attempted to obtain any such license through wilful misrepresentation or fraud, or has failed to pass any examination required under this chapter.

(d) If the licensee or applicant has misappropriated or converted to his own use or has illegally withheld moneys required to be held in a fiduciary capacity.

(e) If the licensee or applicant has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction.

(f) If the licensee or applicant has been guilty of "twisting," as defined in RCW 48.30.180, or of rebating, as defined in chapter 48.30 RCW.

(g) If the licensee or applicant has been convicted, by final judgment, of a felony.

(h) If the licensee or applicant has shown himself to be, and is so deemed by the commissioner, incompetent, or untrustworthy, or a source of injury and loss to the public.

(i) If the licensee has dealt with, or attempted to deal with, insurances, or to exercise powers relative to insurance outside the scope of his licenses.

(2) If any natural person named under a firm or corporate license, or application therefor, commits or has committed any act or fails or has failed to perform any duty which is a ground for the commissioner to revoke, suspend or refuse to issue or renew the license or application for license, the commissioner may revoke, suspend, refuse to renew, or refuse to issue:

(a) The license, or application therefor, of the corporation or firm; or

(b) The right of the natural person to act thereunder; or

(c) Any other license held or applied for by the natural person; or

(d) He may take all such steps.

(3) Any conduct of an applicant or licensee which constitutes ground for disciplinary action under this code shall be deemed such ground notwithstanding that such conduct took place in another state.

(4) The holder of any license which has been revoked or suspended shall surrender the license certificate to the commissioner at the commissioner's request. [1973 1st ex.s. c 152 § 2; 1969 ex.s. c 241 § 11; 1967 c 150 § 23; 1947 c 79 § .17.53; Rem. Supp. 1947 § 45.17.53.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.17.540 Procedure to suspend, revoke or refuse—Effect of conviction of felony. (1) The commissioner shall revoke or refuse to renew any such license immediately and without hearing, upon conviction of the licensee of a felony by final judgment of any court of competent jurisdiction.

(2) The commissioner may suspend, revoke, or refuse to renew any such license:

(a) By order given to the licensee not less than fifteen days prior to the effective date thereof, subject to the

right of the licensee to have a hearing as provided in RCW 48.04.010; or

(b) by an order on hearing made as provided in RCW 34.04.120 effective not less than ten days after date of the giving of the order, subject to the right of the licensee to appeal to the superior court. [1973 1st ex.s. c 107 § 2; 1967 c 150 § 24; 1947 c 79 § .17.54; Rem. Supp. 1947 § 45.17.54.]

Severability—1973 1st ex.s. c 107: See note following RCW 48.17.330.

48.17.550 Duration of suspension. Every order suspending any such license shall specify the period during which suspension will be effective, and which period shall in no event exceed twelve months. [1947 c 79 § .17.55; Rem. Supp. 1947 § 45.17.55.]

48.17.560 Fines may be imposed. After hearing and in addition to or in lieu of the suspension, revocation, or refusal to renew any such license, the commissioner may levy a fine upon the licensee for each offense in amount not less than twenty-five dollars and not more than two hundred and fifty dollars, but in no case more than a total of five hundred dollars. The order levying such fine shall specify the period within which the fine shall be fully paid, and which period shall be not less than fifteen nor more than thirty days from the date of the order. Upon failure to pay any such fine when due, the commissioner shall revoke the licenses of the licensee if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1967 c 150 § 25; 1947 c 79 § .17.56; Rem. Supp. 1947 § 45.17.56.]

Chapter 48.18

THE INSURANCE CONTRACT

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Misrepresentation in application: RCW 48.30.210.

48.18.010 Scope of chapter. The applicable provisions of this chapter shall apply to insurances other than ocean marine and foreign trade insurances. This chapter shall not apply to life or disability insurance policies not issued for delivery in this state nor delivered in this state. [1947 c 79 § .18.01; Rem. Supp. 1947 § 45.18.01.]

48.18.020 Power to contract. (1) Any person eighteen years or older shall be considered of full legal age and may contract for or with respect to insurance. Any person seventeen years or younger shall be considered a minor for purposes of Title 48 RCW.

(2) A minor not less than fifteen years of age as at nearest birthday may, notwithstanding such minority, contract for life or disability insurance on his own life or body, for his own benefit or for the benefit of his father, mother, spouse, child, brother, sister, or grandparent, and may exercise all rights and powers with respect to or under the contract as though of full legal age, and

may surrender his interest therein and give a valid discharge for any benefit accruing or money payable thereunder. The minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate the contract, or any exercise of a right or privilege thereunder, except, that such minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay, by promissory note or otherwise any premium on any such insurance contract. [1973 1st ex.s. c 163 § 2; 1970 ex.s. c 17 § 4; 1947 c 79 § .18.02; Rem. Supp. 1947 § 45.18.02.]

48.18.030 Insurable interest—Personal insurances.

(1) Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives, or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement or injury of the individual insured, the individual insured or his executor or administrator, as the case may be, may maintain an action to recover such benefits from the person so receiving them.

(3) "Insurable interest" as used in this section and in RCW 48.18.060 includes only interests as follows:

(a) In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection; and

(b) in the case of other persons, a lawful and substantial economic interest in having the life, health or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the individual insured.

(c) An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a close corporation or of an interest in such shares, has an insurable interest in the life of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to the life of such individual.

(d) A guardian, trustee or other fiduciary has an insurable interest in the life of any person for whose benefit the fiduciary holds property, and in the life of any other individual in whose life such person has an insurable interest. [1973 1st ex.s. c 89 § 3; 1947 c 79 § .18.03; Rem. Supp. 1947 § 45.18.03.]

Investments by guardians, trustees or other fiduciaries in policies of life insurance: RCW 30.24.120.

48.18.040 Insurable interest—Property insurances.

(1) No contract of insurance on property or of any interest therein or arising therefrom shall be enforceable

except for the benefit of persons having an insurable interest in the things insured.

(2) "Insurable interest" as used in this section means any lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage. [1947 c 79 § .18.04; Rem. Supp. 1947 § 45.18.04.]

48.18.050 Named insured—Interest insured. When the name of a person intended to be insured is specified in the policy, such insurance can be applied only to his own proper interest. This section shall not apply to life and disability insurances. [1947 c 79 § .18.05; Rem. Supp. 1947 § 45.18.05.]

48.18.060 Application—When required. No life or disability insurance contract upon an individual, except a contract of group life insurance or of group or blanket disability insurance as defined in this code, shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, in writing applies therefor or consents thereto, except in the following cases:

(1) A spouse may effectuate such insurance upon the other spouse.

(2) Any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, may effectuate insurance upon the life of the minor. [1947 c 79 § .18.06; Rem. Supp. 1947 § 45.18.06.]

48.18.070 Alteration of application. (1) Any application for insurance in writing by the applicant shall be altered solely by the applicant or by his written consent, except that insertions may be made by the insurer for administrative purposes only in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant. Violation of this provision shall be a misdemeanor.

(2) Any insurer issuing an insurance contract upon such an application unlawfully altered by its officer, employee, or agent shall not have available in any action arising out of such contract, any defense which is based upon the fact of such alteration, or as to any item in the application which was so altered. [1947 c 79 § .18.07; Rem. Supp. 1947 § 45.18.07.]

48.18.080 Application as evidence. (1) No application for the issuance of any insurance policy or contract shall be admissible in evidence in any action relative to such policy or contract, unless a true copy of the application was attached to or otherwise made a part of the policy when issued and delivered. This provision shall not apply to policies or contracts of industrial life insurance.

(2) If any policy of life or disability insurance delivered in this state is reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within fifteen days after receipt of such request at its home office or at any of its branch offices,

deliver or mail to the person making such request, a copy of such application. If such copy is not so delivered or mailed, the insurer shall be precluded from introducing the application as evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal. [1947 c 79 § .18.08; Rem. Supp. 1947 § 45.18.08.]

48.18.090 Warranties and misrepresentations, effect of. (1) Except as provided in subsection (2) of this section, no oral or written misrepresentation or warranty made in the negotiation of an insurance contract, by the insured or in his behalf, shall be deemed material or defeat or avoid the contract or prevent it attaching, unless the misrepresentation or warranty is made with the intent to deceive.

(2) In any application for life or disability insurance made in writing by the insured, all statements therein made by the insured shall, in the absence of fraud, be deemed representations and not warranties. The falsity of any such statement shall not bar the right to recovery under the contract unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer. [1947 c 79 § .18.09; Rem. Supp. 1947 § 45.18.09.]

48.18.100 Forms of policies—Filing and approval. (1) No insurance policy form other than surety bond forms, or application form where written application is required and is to be attached to the policy, or printed life or disability rider or endorsement form shall be issued, delivered, or used unless it has been filed with and approved by the commissioner. This section shall not apply to policies, riders or endorsements of unique character designed for and used with relation to insurance upon a particular subject.

(2) Every such filing shall be made not less than fifteen days in advance of any such issuance, delivery, or use. At the expiration of such fifteen days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he may so affirmatively approve or disapprove any such form, by giving notice of such extension before expiration of the initial fifteen-day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may withdraw any such approval at any time for cause. By approval of any such form for immediate use, the commissioner may waive any unexpired portion of such initial fifteen-day waiting period.

(3) The commissioner's order disapproving any such form or withdrawing a previous approval shall state the grounds therefor.

(4) No such form shall knowingly be so issued or delivered as to which the commissioner's approval does not then exist.

(5) The commissioner may, by order, exempt from the requirements of this section for so long as he deems

proper, any insurance document or form or type thereof as specified in such order, to which in his opinion this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public. [1947 c 79 § .18.10; Rem. Supp. 1947 § 45.18.10.]

Format of disability policies: RCW 48.20.012.

48.18.110 Grounds for disapproval. (1) The commissioner shall disapprove any such form of policy, application, rider, or endorsement, or withdraw any previous approval thereof, only

(a) if it is in any respect in violation of or does not comply with this code; or

(b) if it does not comply with any controlling filing theretofore made and approved; or

(c) if it contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract; or

(d) if it has any title, heading, or other indication of its provisions which is misleading; or

(e) if purchase of insurance thereunder is being solicited by deceptive advertising.

(2) In addition to the grounds for disapproval of any such form as provided in subsection (1) of this section, the commissioner may disapprove any form of disability insurance policy if the benefits provided therein are unreasonable in relation to the premium charged. [1947 c 79 § .18.11; Rem. Supp. 1947 § 45.18.11.]

48.18.120 Standard forms. (1) The commissioner shall, after hearing, from time to time promulgate such rules and regulations as may be necessary to define and effect reasonable uniformity in all basic contracts of fire insurance which are commonly known as the standard form fire policies and may be so referred to in this code, and the usual supplemental coverages, riders, or endorsements thereon or thereto, to the end that such definitions shall be applied in the construction of the various sections of this code wherein such terms are used and that there be a reasonable concurrency of contract where two or more insurers insure the same subject and risk. All such forms heretofore approved by the commissioner and for use as of immediately prior to the effective date of this code, may continue to be so used until the further order of the commissioner made pursuant to this subsection or pursuant to any other provision of this code.

(2) The commissioner may from time to time, after hearing, promulgate such rules and regulations as he deems necessary to establish reasonable minimum standard conditions and terminology for basic benefits to be provided by disability insurance contracts which are subject to chapters 48.20 and 48.21 RCW, for the purpose of expediting his approval of such contracts pursuant to this code. No such promulgation shall be inconsistent with standard provisions as required pursuant to RCW 48.18.130, nor contain requirements inconsistent with requirements relative to the same benefit provision as formulated or approved by the National

Association of Insurance Commissioners. [1957 c 193 § 10; 1947 c 79 § .18.12; Rem. Supp. 1947 § 45.18.12.]

48.18.125 Loss payable and mortgagee clauses for property and automobile physical damage insurances—Requirement to use adopted forms. The commissioner is hereby authorized, and shall within a reasonable time following July 30, 1967, adopt standard forms for loss payable and mortgagee clauses for property and automobile physical damage insurances, pursuant to the procedures set forth in RCW 48.18.120(1). Following the adoption of such forms, no insurer authorized to do business in the state shall use any form other than those so adopted. [1967 ex.s. c 12 § 1.]

48.18.130 Standard provisions. (1) Insurance contracts shall contain such standard provisions as are required by the applicable chapters of this code pertaining to contracts of particular kinds of insurance. The commissioner may waive the required use of a particular standard provision in a particular insurance contract form if

(a) he finds such provision unnecessary for the protection of the insured, and inconsistent with the purposes of the contract, and

(b) the contract is otherwise approved by him.

(2) No insurance contract shall contain any provision inconsistent with or contradictory to any such standard provision used or required to be used, but the commissioner may, except as to the standard provisions of individual disability insurance contracts as required under chapter 48.20 RCW, approve any provision which is in his opinion more favorable to the insured than the standard provision or optional standard provision otherwise required. No endorsement, rider, or other documents attached to such contract shall vary, extend, or in any respect conflict with any such standard provision, or with any modification thereof so approved by the commissioner as being more favorable to the insured.

(3) In lieu of the standard provisions required by this code for contracts for particular kinds of insurance, substantially similar standard provisions required by the law of a foreign or alien insurer's domicile may be used when approved by the commissioner. [1947 c 79 § .18.13; Rem. Supp. 1947 § 45.18.13.]

Standard provisions

disability: Chapter 48.20 RCW.

group and blanket disability: Chapter 48.21 RCW.

group life and annuities: Chapter 48.24 RCW.

industrial life: Chapter 48.25 RCW.

life insurance and annuities: Chapter 48.23 RCW.

48.18.140 Contents of policies in general. (1) The written instrument, in which a contract of insurance is set forth, is the policy.

(2) A policy shall specify:

(a) The names of the parties to the contract. The insurer's name shall be clearly shown in the policy.

(b) The subject of the insurance.

(c) The risk insured against.

(d) The time at which the insurance thereunder takes effect and the period during which the insurance is to continue.

(e) A statement of the premium, and if other than life, disability, or title insurance, the premium rate where applicable.

(f) The conditions pertaining to the insurance.

(3) If under the contract the exact amount of premiums is determinable only at termination of the contract, a statement of the basis and rates upon which the final premium is to be determined and paid shall be furnished any policy examining bureau having jurisdiction or to the insured upon request.

(4) This section shall not apply to surety insurance contracts. [1957 c 193 § 11; 1947 c 79 § .18.14; Rem. Supp. 1947 § 45.18.14.]

48.18.150 Additional contents. A policy may contain additional provisions, which are not inconsistent with this code, and which are

(1) required to be so inserted by the laws of the insurer's state of domicile; or

(2) necessary, on account of the manner in which the insurer is constituted or operated, to state the rights and obligations of the parties to the contract. [1947 c 79 § .18.15; Rem. Supp. 1947 § 45.18.15.]

48.18.160 Charter or bylaw provisions. No policy shall contain any provision purporting to make any portion of the charter, bylaws, or other constituent document of the insurer a part of the contract unless such portion is set forth in full in the policy. Any policy provision in violation of this section shall be invalid. [1947 c 79 § .18.16; Rem. Supp. 1947 § 45.18.16.]

48.18.170 "Premium" defined. "Premium" as used in this code means all sums charged, received, or deposited as consideration for an insurance contract or the continuance thereof. Any assessment, or any "membership," "policy," "survey," "inspection," "service" or similar fee or charge made by the insurer in consideration for an insurance contract is deemed part of the premium. [1947 c 79 § .18.17; Rem. Supp. 1947 § 45.18.17.]

48.18.180 Stated premium must include all charges. (1) The premium stated in the policy shall be inclusive of all fees, charges, premiums, or other consideration charged for the insurance or for the procurement thereof.

(2) No insurer or its officer, employee, agent, solicitor, or other representative shall charge or receive any fee, compensation, or consideration for insurance which is not included in the premium specified in the policy.

(3) Each violation of this section is a gross misdemeanor. [1947 c 79 § .18.18; Rem. Supp. 1947 § 45.18.18.]

48.18.190 Policy must contain entire contract. No agreement in conflict with, modifying, or extending any contract of insurance shall be valid unless in writing and made a part of the policy. [1947 c 79 § .18.19; Rem. Supp. 1947 § 45.18.19.]

48.18.200 Limiting actions, jurisdiction. (1) No insurance contract delivered or issued for delivery in this state and covering subjects located, resident, or to be performed in this state, shall contain any condition, stipulation, or agreement

(a) requiring it to be construed according to the laws of any other state or country except as necessary to meet the requirements of the motor vehicle financial responsibility laws of such other state or country; or

(b) depriving the courts of this state of the jurisdiction of action against the insurer; or

(c) limiting right of action against the insurer to a period of less than one year from the time when the cause of action accrues in connection with all insurances other than property and marine and transportation insurances. In contracts of property insurance, or of marine and transportation insurance, such limitation shall not be to a period of less than one year from the date of the loss.

(2) Any such condition, stipulation, or agreement in violation of this section shall be void, but such voiding shall not affect the validity of the other provisions of the contract. [1947 c 79 § .18.20; Rem. Supp. 1947 § 45.18.20.]

48.18.210 Execution of policies. (1) Every insurance contract shall be executed in the name of and on behalf of the insurer by its officer, employee, or representative duly authorized by the insurer.

(2) A facsimile signature of any such executing officer, employee or representative may be used in lieu of an original signature.

(3) No insurance contract heretofore or hereafter issued and which is otherwise valid shall be rendered invalid by reason of the apparent execution thereof on behalf of the insurer by the imprinted facsimile signature of any individual not authorized so to execute as of the date of the policy, if the policy is countersigned with the original signature of an individual then so authorized to countersign. [1947 c 79 § .18.21; Rem. Supp. 1947 § 45.18.21.]

48.18.220 Receipt of premium to bind coverage—Contents of receipt. Where an agent or other representative of an insurer receipts premium money at the time that agent or representative purports to bind coverage, the receipt shall state: (a) that it is a binder, (b) a brief description of the coverage bound, and (c) the identity of the insurer in which the coverage is bound. This section does not apply as to life and disability insurances. [1967 ex.s. c 12 § 2.]

48.18.230 Binders—Duration. (1) A "binder" is used to bind insurance temporarily pending the issuance of the policy. No binder shall be valid beyond the issuance of the policy as to which it was given, or beyond ninety days from its effective date, whichever period is the shorter.

(2) If the policy has not been issued a binder may be extended or renewed beyond such ninety days upon the commissioner's written approval, or in accordance with

such rules and regulations relative thereto as the commissioner may promulgate. [1947 c 79 § .18.23; Rem. Supp. 1947 § 45.18.23.]

48.18.240 Binders—Agent's liability. The commissioner may suspend or revoke the license of any agent issuing or purporting to issue any binder as to any insurer named therein as to which he is not then authorized so to bind. [1947 c 79 § .18.24; Rem. Supp. 1947 § 45.18.24.]

48.18.250 Underwriters' and combination policies. (1) Two or more authorized insurers may jointly issue, and shall be jointly and severally liable on, an underwriters' policy bearing their names. Any one insurer may issue policies in the name of an underwriter's department and such policies shall plainly show the true name of the insurer.

(2) Two or more authorized insurers may, with the commissioner's approval, issue a combination policy which shall contain provisions substantially as follows:

(a) That the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy.

(b) That service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

(3) This section shall not apply to co-surety obligations. [1947 c 79 § .18.25; Rem. Supp. 1947 § 45.18.25.]

48.18.260 Delivery of policy. (1) Subject to the insurer's requirements as to payment of premium, every policy shall be delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance.

(2) In event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle or aircraft, and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle or aircraft is insured, a duplicate of such policy, or memorandum thereof setting forth the type of coverage, limits of liability, premiums for the respective coverages, and duration of the policy, shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a conspicuous statement of such fact shall be printed, written, or stamped on the face of such duplicate policy or memorandum. [1947 c 79 § .18.26; Rem. Supp. 1947 § 45.18.26.]

Auto dealer or mortgagee must furnish buyer itemized statement of insurance and other charges: RCW 46.70.130.

48.18.280 Renewal of policy. Any insurance policy terminating by its terms at a specified expiration date and not otherwise renewable, may be renewed or extended at the option of the insurer and upon a currently authorized policy form and at the premium rate then required therefor for a specific additional period or periods by a certificate or by endorsement of the policy, and without requiring the issuance of a new policy. [1947 c 79 § .18.28; Rem. Supp. 1947 § 45.18.28.]

48.18.290 Cancellation by insurer. (1) Cancellation by the insurer of any policy which by its terms is cancellable at the option of the insurer, or of any binder based on such policy, may be effected as to any interest only upon compliance with either or both of the following:

(a) Written notice of such cancellation must be actually delivered or mailed to the insured or to his representative in charge of the subject of the insurance not less than five days prior to the effective date of the cancellation.

(b) Like notice must also be so delivered or mailed to each mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder.

(2) The mailing of any such notice shall be effected by depositing it in a sealed envelope, directed to the addressee at his last address as known to the insurer or as shown by the insurer's records, with proper prepaid postage affixed, in a letter depository of the United States post office. The insurer shall retain in its records any such item so mailed, together with its envelope, which was returned by the post office upon failure to find, or deliver the mailing to, the addressee.

(3) The affidavit of the individual making or supervising such a mailing, shall constitute prima facie evidence of such facts of the mailing as are therein affirmed.

(4) The portion of any premium paid to the insurer on account of the policy, unearned because of the cancellation and in amount as computed on the pro rata basis, must be actually paid to the insured or other person entitled thereto as shown by the policy or by any endorsement thereon, or be mailed to the insured or such person as soon as practicable following such cancellation. Any such payment may be made by cash, or by check, bank draft, or money order.

(5) This section shall not apply to contracts of life or disability insurance without provision for cancellation prior to the date to which premiums have been paid. [1947 c 79 § .18.29; Rem. Supp. 1947 § 45.18.29.]

48.18.291 Cancellation of private automobile insurance by insurer—Notice—Requirements. (1) No contract of insurance predicated upon the use of a private passenger automobile shall be terminated by cancellation by the insurer until at least twenty days after mailing written notice of cancellation to the named insured at the latest address filed with the insurer by or on behalf of the named insured: *Provided*, That where cancellation is for nonpayment of premium, at least ten

days notice of cancellation, accompanied by the reason therefor, shall be given.

(2) (a) No notice of cancellation by the insurer as to a contract of insurance to which subsection (1) applies shall be valid if sent more than sixty days after the policy has been in effect unless:

(i) The named insured fails to discharge when due any of his obligations in connection with the payment of premium for the policy or any installment thereof, whether payable directly to the insurer or to its agent or indirectly under any premium finance plan or extension of credit.

(ii) The driver's license of the named insured, or of any other operator who customarily operates an automobile insured under the policy, has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty days immediately preceding the effective date of the renewal policy.

(b) Modification by the insurer of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars shall not be deemed a cancellation of the coverage or of the policy.

(3) The substance of subsections (1) and (2)(a) of this section must be set forth in each contract of insurance subject to the provisions of subsection (1) above, and may be in the form of an attached endorsement.

(4) No notice of cancellation of a policy which can be canceled only pursuant to subsection (2) shall be effective unless the reason therefor accompanies or is included in the notice of cancellation, or unless the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than five days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation. [1969 ex.s. c 241 § 19.]

Construction—1969 ex.s. c 241: "Sections 19 through 25 of this 1969 amendatory act shall become operative September 1, 1969, and shall apply to policies written or renewed, or which have a renewal anniversary thereafter. Sections 19 through 25 of this 1969 amendatory act shall not apply to or affect the validity of any notice of cancellation mailed or delivered prior to the operative date of this amendatory act. Sections 19 through 25 of this 1969 amendatory act shall not be construed to affect cancellation of a renewal policy, if notice of cancellation is mailed or delivered within sixty days after the operative date of sections 19 through 25 of this amendatory act. Sections 19 through 25 of this 1969 amendatory act shall not be construed to require notice of intention not to renew any policy which expires less than thirty days after the operative date of sections 19 through 25 of this 1969 amendatory act." [1969 ex.s. c 241 § 25.] This applies to RCW 48.18.291-48.18.297.

48.18.292 Refusal to renew private automobile insurance by insurer. (1) Each insurer shall be required to renew any contract of insurance subject to RCW 48.18.291 unless one of the following situations exists:

(a) The insurer gives the named insured at least twenty days' notice in writing as provided for in RCW 48.18.291(1), that it proposes to refuse to renew the insurance contract upon its expiration date; and sets forth therein the actual reason for refusing to renew; or

(b) The insurer has communicated its willingness to renew in writing to the named insured, and has included therein a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy and the date by which such payment must be made, and the insured fails to discharge when due his obligation in connection with the payment of such premium or portion thereof; or

(c) The insured's agent or broker has procured other coverage acceptable to the insured at least twenty days prior to the expiration of the policy period.

(2) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(3) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term: *Provided, however,* That any policy with a policy period or term of six months or less whether or not made continuous for successive terms upon the payment of additional premiums shall for the purpose of RCW 48.18.291 through 48.18.297 be considered as if written for a policy period or term of six months: *Provided, further,* That any policy written for a term longer than one year or any policy with no fixed expiration date, shall, for the purpose of RCW 48.18.291 through 48.18.297, be considered as if written for successive policy periods or terms of one year. [1973 1st ex.s. c 152 § 3; 1969 ex.s. c 241 § 20.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.18.293 Nonliability of commissioner, agents, insurer for information giving reasons for cancellation or refusal to renew—Proof of mailing of notice. (1) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, his agents, or members of his staff, or against any insurer, its authorized representative, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or refusal to renew, for any statement made by any of them in any written notice of cancellation or refusal to renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith.

(2) Proof of mailing of notice of cancellation or refusal to renew or of reasons for cancellation, to the named insured, at the latest address filed with the insurer by or on behalf of the named insured shall be sufficient proof of notice. [1969 ex.s. c 241 § 21.]

48.18.295 RCW 48.18.291 through 48.18.297 not to prevent cancellation or nonrenewal, when. Nothing in RCW 48.18.291 through 48.18.297 shall be construed to prevent the cancellation or nonrenewal of any such insurance where:

(1) Such cancellation or nonrenewal is ordered by the commissioner under a statutory delinquency proceeding commenced under the provisions of chapter 48.31 RCW, or

(2) Permission for such cancellation or nonrenewal has been given by the commissioner on a showing that the continuation of such coverage can reasonably be expected to create a condition in the company hazardous to its policyholder, or to its creditors, or to its members, subscribers, or stockholders, or to the public. [1969 ex.s. c 241 § 22; 1967 ex.s. c 95 § 2.]

Severability—1967 ex.s. c 95: "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 and circumstances is not affected." [1967 ex.s. c 95 § 16.]

48.18.296 Contracts to which RCW 48.18.291 through 48.18.297 inapplicable. (1) The provisions of RCW 48.18.291 through 48.18.297 shall not apply to:

(a) Contracts of insurance issued under the assigned risk plan; and

(b) Contracts of insurance providing principally general casualty or property insurance in addition to vehicle insurance; and

(c) Contracts of insurance insuring more than four motor vehicles; and

(d) Any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards. [1969 ex.s. c 241 § 23.]

48.18.297 Private passenger automobile defined. A private passenger automobile as used in RCW 48.18.291 through 48.18.297 shall mean:

(1) An individually owned motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others.

(2) Any other individually owned four-wheel motor vehicle with a load capacity of fifteen hundred pounds or less which is not used in the occupation, profession, or business of the insured. [1969 ex.s. c 241 § 24.]

48.18.298 Disability insurance—Refusal to renew by insurer. No insurer shall refuse to renew any policy of individual disability insurance issued after July 1, 1973 because of a change in the physical or mental condition or health of any person covered thereunder: *Provided*, That after approval of the insurance commissioner, an insurer may discharge its obligation to renew the contract by obtaining for the insured coverage with another insurer which is comparable in terms of premiums and benefits. [1973 1st ex.s. c 188 § 1.]

Severability—1973 1st ex.s. c 188: "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." [1973 1st ex.s. c 188 § 5.]

48.18.299 Disability insurance—Cancellation by insurer. No contract of insurance enumerated in RCW 48.18.298 shall be terminated by cancellation by the insurer during the period of contract except for nonpayment of premium. This section shall not be deemed to affect the right of the insurer to rescind the policy as

limited and defined in RCW 48.18.090. [1973 1st ex.s. c 188 § 2.]

Severability—1973 1st ex.s. c 188: See note following RCW 48.18.298.

48.18.300 Cancellation by insured. (1) Cancellation by the insured of any policy which by its terms is cancellable at the insured's option or of any binder based on such policy may be effected by written notice thereof to the insurer or surrender of the policy or binder for cancellation prior to or on the effective date of such cancellation. In event the policy or binder has been lost or destroyed and cannot be so surrendered, the insurer may in lieu of such surrender accept and in good faith rely upon the insured's written statement setting forth the fact of such loss or destruction.

(2) As soon as practicable following such cancellation the insurer shall pay to the insured or to the person entitled thereto as shown by the insurer's records, any unearned portion of any premium paid on the policy as computed on the customary short rate or as otherwise specified in the policy. If no premium has been paid on the policy, the insured shall be liable to the insurer for premium for the period during which the policy was in force.

(3) The surrender of a policy to the insurer for any cause by any person named therein as having an interest insured thereunder shall create a presumption that such surrender is concurred in by all persons so named.

(4) This section shall not apply to life insurance policies or to annuity contracts. [1955 c 303 § 16; 1947 c 79 § .18.30; Rem. Supp. 1947 § 45.18.30.]

48.18.310 Cancellation by commissioner. The commissioner may order the immediate cancellation of any policy the procuring or effectuation of which was accomplished through or accompanied by a violation of this code, except in cases where the policy by its terms is not cancellable by the insurer and the insured did not knowingly participate in any such violation. [1947 c 79 § .18.31; Rem. Supp. 1947 § 45.18.31.]

48.18.320 Annulment of liability policies. No insurance contract insuring against loss or damage through legal liability for the bodily injury or death by accident of any individual, or for damage to the property of any person, shall be retroactively annulled by any agreement between the insurer and insured after the occurrence of any such injury, death, or damage for which the insured may be liable, and any such annulment attempted shall be void. [1947 c 79 § .18.32; Rem. Supp. 1947 § 45.18.32.]

48.18.340 Dividends payable to real party in interest. (1) Every insurer issuing participating policies, shall pay dividends, unused premium refunds or savings distributed on account of any such policy, only to the real party in interest entitled thereto as shown by the insurer's records, or to any person to whom the right thereto has been assigned in writing of record with the insurer, or given in the policy by such real party in interest.

(2) Any person who is shown by the insurer's records to have paid for his own account, or to have been ultimately charged for, the premium for insurance provided by a policy in which another person is the nominal insured, shall be deemed such real party in interest proportionate to premium so paid or so charged. This subsection shall not apply to any such dividend, refund, or distribution which would amount to less than one dollar.

(3) This section shall not apply to contracts of group life insurance, group annuities, or group disability insurance. [1947 c 79 § .18.34; Rem. Supp. 1947 § 45.18.34.]

48.18.350 Breach of warranty prior to loss—Effect. If any breach of a warranty or condition in any insurance contract occurs prior to a loss under the contract, such breach shall not avoid the contract nor avail the insurer to avoid liability, unless the breach exists at the time of the loss. [1947 c 79 § .18.35; Rem. Supp. 1947 § 45.18.35.]

48.18.360 Assignment of policies—Life and disability. Subject to the terms of the policy relating to its assignment, life insurance policies, other than industrial or group life insurance policies, and disability policies providing benefits for accidental death, whether such policies were heretofore or are hereafter issued, and under the terms of which the beneficiary may be changed upon the sole request of the insured, may be assigned either by pledge or transfer of title, by an assignment executed by the insured alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Industrial life insurance policies may be made assignable only to a bank or trust company. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment. [1947 c 79 § .18.36; Rem. Supp. 1947 § 45.18.36.]

48.18.370 Payment discharges insurer—Life and disability. Whenever the proceeds of, or payments under a life or disability insurance policy, heretofore or hereafter issued, become payable and the insurer makes payment thereof in accordance with the terms of the policy, or in accordance with any written assignment thereof pursuant to RCW 48.18.360, the person then designated in the policy or by such assignment as being entitled thereto, shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payment shall fully discharge the insurer from all claims under the policy unless, before payment is made, the insurer has received at its home office, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy. [1947 c 79 § .18.37; Rem. Supp. 1947 § 45.18.37.]

48.18.375 Assignment of interests under group insurance policy. A person whose life is insured under a group insurance policy may, subject and pursuant to the terms of the policy, or pursuant to an arrangement between the insured, the group policyholder and the insurer, assign to any or all his spouse, children, parents, or a trust for the benefit of any or all of them, all or any part of his incidents of ownership, rights, title, and interests, both present and future, under such policy including specifically, but not by way of limitation, the right to designate a beneficiary or beneficiaries thereunder and the right to have an individual policy issued to him in case of termination of employment or of said group insurance policy. Such an assignment by the insured, made either before or after July 16, 1973, is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all of such incidents of ownership, rights, title, and interests so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment. This section acknowledges, declares, and codifies the existing right of assignment of interests under group insurance policies. [1973 1st ex.s. c 163 § 3.]

48.18.390 Simultaneous deaths—Payment of proceeds—Life insurance. Where the individual insured and the beneficiary designated in a life insurance policy or policy insuring against accidental death have died and there is not 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, unless otherwise expressly provided in the policy. [1947 c 79 § .18.39; Rem. Supp. 1947 § 45.18.39.]

Distribution of proceeds of insurance policy when insured and beneficiary die simultaneously: RCW 11.05.040.

48.18.400 Exemption of proceeds—Disability. The proceeds or avails of all contracts of disability insurance and of provisions providing benefits on account of the insured's disability which are supplemental to life insurance or annuity contracts heretofore or hereafter effected shall be exempt from all liability for any debt of the insured, and from any debt of the beneficiary existing at the time the proceeds are made available for his use. [1947 c 79 § .18.40; Rem. Supp. 1947 § 45.18.40.]

48.18.410 Exemption of proceeds—Life. (1) The lawful beneficiary, assignee, or payee of a life insurance policy, other than an annuity, heretofore or hereafter effected by any person on his own life, or on the life of another, in favor of a person other than himself, shall be entitled to the proceeds and avails of the policy against the creditors and representatives of the insured and of the person effecting the insurance, and such proceeds and avails shall also be exempt from all liability for any debt of such beneficiary, existing at the time the proceeds or avails are made available for his own use.

(2) The provisions of subsection (1) of this section shall apply

(a) whether or not the right to change the beneficiary is reserved or permitted in the policy; or

(b) whether or not the policy is made payable to the person whose life is insured or to his estate if the beneficiary, assignee or payee shall predecease such person; except, that this subsection shall not be construed so as to defeat any policy provision which provides for disposition of proceeds in the event the beneficiary shall predecease the insured.

(3) The exemptions provided by subsection (1) of this section, subject to the statute of limitations, shall not apply

(a) to any claim to or interest in such proceeds or avails by or on behalf of the insured, or the person so effecting the insurance, or their administrators or executors, in whatever capacity such claim is made or such interest is asserted; or

(b) to any claim to or interest in such proceeds or avails by or on behalf of any person to whom rights thereto have been transferred with intent to defraud creditors; but an insurer shall be liable to all such creditors only as to amounts aggregating not to exceed the amount of such proceeds or avails remaining in the insurer's possession at the time the insurer receives at its home office written notice by or on behalf of such creditors, of claims to recover for such transfer, with specification of the amounts claimed; or

(c) to so much of such proceeds or avails as equals the amount of any premiums or portion thereof paid for the insurance with intent to defraud creditors, with interest thereon, and if prior to the payment of such proceeds or avails the insurer has received at its home office written notice by or on behalf of the creditor, of a claim to recover for premiums paid with intent to defraud creditors, with specification of the amount claimed.

(4) For the purposes of subsection (1) of this section a policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by such clause.

(5) No person shall be compelled to exercise any rights, powers, options or privileges under any such policy. [1947 c 79 § .18.41; Rem. Supp. 1947 § 45.18.41.]

48.18.420 Exemption of proceeds—Group life. (1) A policy of group life insurance or the proceeds thereof payable to the individual insured or to the beneficiary thereunder, shall not be liable, either before or after payment, to be applied to any legal or equitable process to pay any liability of any person having a right under the policy. The proceeds thereof, when not made payable to a named beneficiary or to a third person pursuant to a facility-of-payment clause, shall not constitute a part of the estate of the individual insured for the payment of his debts.

(2) This section shall not apply to group life insurance policies issued under RCW 48.24.040 (debtor

groups) to the extent that such proceeds are applied to payment of the obligation for the purpose of which the insurance was so issued. [1947 c 79 § .18.42; Rem. Supp. 1947 § 45.18.42.]

48.18.430 Exemption of proceeds, commutation—Annuities. (1) The benefits, rights, privileges and options which under any annuity contract heretofore or hereafter issued are due or prospectively due the annuitant who paid the consideration for the annuity contract, shall not be subject to execution nor shall the annuitant be compelled to exercise any such rights, powers or options, nor shall creditors be allowed to interfere with or terminate the contract, except:

(a) As to amounts paid for or as premium on any such annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice at its home office prior to the making of the payments to the annuitant out of which the creditor seeks to recover. Any such notice shall specify the amount claimed or such facts as will enable the insurer to ascertain such amount, and shall set forth such facts as will enable the insurer to ascertain the insurance or annuity contract, the person insured or annuitant and the payments sought to be avoided on the ground of fraud.

(b) The total exemption of benefits presently due and payable to any annuitant periodically or at stated times under all annuity contracts under which he is an annuitant, shall not at any time exceed two hundred and fifty dollars per month for the length of time represented by such installments, and that such periodic payment in excess of two hundred and fifty dollars per month shall be subject to garnishee execution to the same extent as are wages and salaries.

(c) If the total benefits presently due and payable to any annuitant under all annuity contracts under which he is an annuitant, shall at any time exceed payment at the rate of two hundred and fifty dollars per month, then the court may order such annuitant to pay to a judgment creditor or apply on the judgment, in installments, such portion of such excess benefits as to the court may appear just and proper, after due regard for the reasonable requirements of the judgment debtor and his family, if dependent upon him, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) The benefits, rights, privileges or options accruing under such contract to a beneficiary or assignee shall not be transferable nor subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions and exceptions contained herein for the annuitant, shall apply with respect to such beneficiary or assignee.

(3) An annuity contract within the meaning of this section shall be any obligation to pay certain sums at stated times, during life or lives, or for a specified term or terms, issued for a valuable consideration, regardless of whether or not such sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives, or for a specified term or terms.

[1949 c 190 § 25; 1947 c 79 § .18.43; Rem. Supp. 1949 § 45.18.43.]

48.18.440 Spouse's rights in life insurance policy. (1) Every life insurance policy heretofore or hereafter made payable to or for the benefit of the spouse of the insured, and every life insurance policy heretofore or hereafter assigned, transferred, or in any way made payable to a spouse or to a trustee for the benefit of a spouse, regardless of how such assignment or transfer is procured, shall, unless contrary to the terms of the policy, inure to the separate use and benefit of such spouse: *Provided*, That the beneficial interest of a spouse in a policy upon the life of a child of the spouses, however such interest is created, shall be deemed to be a community interest and not a separate interest, unless expressly otherwise provided by the policy.

(2) In any life insurance policy heretofore or hereafter issued upon the life of a spouse the designation heretofore or hereafter made by such spouse of a beneficiary in accordance with the terms of the policy, shall create a presumption that such beneficiary was so designated with the consent of the other spouse, but only as to any beneficiary who is the child, parent, brother, or sister of either of the spouses. The insurer may in good faith rely upon the representations made by the insured as to the relationship to him of any such beneficiary. [1947 c 79 § .18.44; Rem. Supp. 1947 § 45.18.44.]

48.18.450 Life insurance payable to trustee named as beneficiary in the policy. Life insurance may be made payable to a trustee to be named as beneficiary in the policy and the proceeds of such insurance paid to such trustee shall be held and disposed of by the trustee as provided in a trust agreement or declaration of trust made by the insured during his lifetime. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee to receive such insurance proceeds as beneficiary, and any such trustee may also receive assets, other than insurance proceeds, by testamentary disposition and administer them according to the terms of the trust agreement or declaration of trust as they exist at the death of the testator. [1963 c 227 § 1.]

48.18.452 Life insurance designating as beneficiary a trustee named by will. A policy of life insurance may designate as beneficiary a trustee or trustees named or to be named by will, if the designation is made in accordance with the provisions of the policy and the requirements of the insurance company. Immediately after the proving of the will the proceeds of such insurance shall be paid to the trustee or trustees named therein to be held and disposed of under the terms of the will as they exist at the death of the testator, but if no qualified trustee makes claim to the proceeds from the insurance company within one year after the death of the insured, or if satisfactory evidence is furnished the insurance company within such one-year period

showing that no trustee can qualify to receive the proceeds, payment shall be made by the insurance company to those thereafter entitled. The proceeds of the insurance as collected by the trustee or trustees shall not be subject to debts of the insured and inheritance tax to any greater extent than if such proceeds were payable to any other named beneficiary other than the estate of the insured. Enactment of this section shall not invalidate previous life insurance policy beneficiary designations naming trustees of trusts established by will. [1963 c 227 § 2.]

48.18.460 Proof of loss—Furnishing forms. An insurer shall furnish, upon written request of any person claiming to have a loss under any insurance contract, forms of proof of loss for completion by such person. But such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion. [1949 c 190 § 26; 1947 c 79 § .18.46; Rem. Supp. 1949 § 45.18.46.]

48.18.470 Claims administration—Not waiver. None of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

(a) Acknowledgment of the receipt of notice of loss or of claim under the policy.

(b) Furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss, or receiving or acknowledging receipt of any such forms or proofs completed or uncompleted.

(c) Investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim. [1947 c 79 § .18.47; Rem. Supp. 1947 § 45.18.47.]

48.18.480 Discrimination prohibited. No insurer shall make or permit any unfair discrimination between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, and expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charged therefor, or in the benefits payable or in any other rights or privileges accruing thereunder. This provision shall not prohibit fair discrimination by a life insurer as between individuals having unequal expectation of life. [1957 c 193 § 12; 1947 c 79 § .18.48; Rem. Supp. 1947 § 45.18.480.]

48.18.510 Validity of noncomplying forms. Any insurance policy, rider, or endorsement hereafter issued and otherwise valid, which contains any condition or provision not in compliance with the requirements of this code, shall not be rendered invalid thereby, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code. [1947 c 79 § .18.51; Rem. Supp. 1947 § 45.18.51.]

48.18.520 Construction of policies. Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy, and as amplified, extended, or modified by any rider, endorsement, or application attached to and made a part of the policy. [1947 c 79 § .18.52; Rem. Supp. 1947 § 45.18.52.]

48.18.530 Certain provisions of insurance policies deemed nontestamentary. See RCW 11.02.090.

Chapter 48.18A VARIABLE CONTRACT ACT

Sections

- 48.18A.010 Short title—Intent.
 48.18A.020 Separate accounts authorized—Allocations—Benefits—Limitations—Valuation—Sale, transfer or exchange of assets.
 48.18A.030 Statements required in contracts—Payment on death, incidental benefit provision.
 48.18A.040 Licensed or organized to do life insurance or annuity business required—Exceptions.
 48.18A.050 Applicability of other code provisions—Contract requirements.
 48.18A.060 Licensing requirement.
 48.18A.070 Authority of commissioner.
 48.18A.900 Effective date—1969 c 104.

48.18A.010 Short title—Intent. This chapter shall be known as the "Variable Contract Act" and is intended to authorize the sale of both individual and group variable contracts. [1969 c 104 § 1.]

48.18A.020 Separate accounts authorized—Allocations—Benefits—Limitations—Valuation—Sale, transfer or exchange of assets. A domestic life insurer may, by or pursuant to resolution of its board of directors, establish one or more separate accounts, and may allocate thereto amounts (including without limitation proceeds applied under optional modes of settlement or under dividend options) to provide for life insurance or annuities (and other benefits incidental thereto), payable in fixed or variable amounts or both, subject to the following:

(1) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the insurer.

(2) (a) Except as hereinafter provided, amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurers: *Provided*, That to the extent that the insurer's reserve liability with regard to (i) benefits guaranteed as to dollar amount and duration, and (ii) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested under such conditions as the commissioner may prescribe. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to the investments of the insurer.

(b) With respect to seventy-five percent of the market value of the total assets in a separate account no insurer shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market value, would exceed ten percent of the market value of the assets of such separate account: *Provided*, That the commissioner may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this state.

(c) Unless otherwise permitted by law or approved by the commissioner, no insurer shall purchase or otherwise acquire for its separate accounts the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts, in the aggregate, will own more than ten percent of the total issued and outstanding voting securities of such issuer: *Provided*, That the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interests in such accounts.

(d) The limitations provided in paragraphs (b) and (c) of this subsection shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the United States Investment Company Act of 1940: *Provided*, That the investments of such investment company shall comply in substance therewith.

(3) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account: *Provided*, That unless otherwise approved by the commissioner, the portion, if any, of the assets of such separate account equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (2) of this section shall be valued in accordance with the rules otherwise applicable to the insurer's assets.

(4) Amounts allocated to a separate account in the exercise of the power granted by this chapter shall be owned by the insurer and the insurer shall not be, nor hold itself out to be, a trustee with respect to such amounts. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the insurer may conduct.

(5) No sale, exchange or other transfer of assets may be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made

solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made (a) by a transfer of cash, or (b) by a transfer of securities having a readily determinable market value: *Provided*, That such transfer of securities is approved by the commissioner. The commissioner may approve other transfers among such accounts, if, in his opinion, such transfers would not be inequitable.

(6) To the extent such insurer deems it necessary to comply with any applicable federal or state law, such insurer, with respect to any separate account, including without limitation any separate account which is a management investment company or a unit investment trust, may provide for persons having interest therein, as may be appropriate, voting and other rights and special procedures for the conduct of the business of such account, including without limitation, special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such insurer, to manage the business of such account. [1973 1st ex.s. c 163 § 4; 1969 c 104 § 2.]

48.18A.030 Statements required in contracts—

Payment on death, incidental benefit provision. (1) Every variable contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurer in determining the dollar amount of such variable benefits. Any such contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

(2) Variable annuity contracts delivered or issued for delivery in this state may include as an incidental benefit provision for payment on death during the deferred period of an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at time of death. For this purpose such benefit shall not be deemed to be life insurance and therefore not subject to any statutory provisions governing life insurance contracts. A provision for any other benefits on death during the deferred period will be subject to such insurance law provisions. [1973 1st ex.s. c 163 § 5; 1969 c 104 § 3.]

48.18A.040 Licensed or organized to do life insurance or annuity business required—Exceptions. No insurer shall deliver or issue, for delivery within this state, contracts under this chapter unless it is licensed or organized to do a life insurance or annuity business in this state, and unless the commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this

state. In this connection, the commissioner shall consider among other things:

- (1) The history and financial condition of the insurer;
- (2) The character, responsibility and fitness of the officers and directors of the insurer; and
- (3) The law and regulation under which the insurer is authorized in the state of domicile to issue variable contracts.

An insurer which issues variable contracts and which is a subsidiary of, or affiliated through common management or ownership with, another life insurer authorized to do business in this state may be deemed to have met the provisions of this section if either it or the parent or affiliated company meets the requirements hereof: *Provided*, That no insurer may provide variable benefits in its contracts unless it is an admitted insurer having and continually maintaining a combined capital and surplus of at least one million dollars. [1969 c 104 § 4.]

48.18A.050 Applicability of other code provisions—

Contract requirements. The provisions of RCW 48.23.020, 48.23.030, 48.23.080 through 48.23.120, 48.23.140, 48.23.150, 48.23.200 through 48.23.240, 48.23.310, 48.23.350, and 48.23.360, and the provisions of chapter 48.24 RCW shall be inapplicable to variable contracts; nor shall any provision in the code requiring contracts to be participating be deemed applicable to variable contracts. Except as otherwise provided in this chapter, all pertinent provisions of the insurance code shall apply to separate accounts and contracts relating thereto. Any individual variable life insurance or individual variable annuity contract delivered or issued for delivery in this state shall contain grace, reinstatement, and nonforfeiture provisions appropriate to such contracts, and any such variable life insurance contract shall provide that the investment experience of the separate account shall in no event operate to reduce the death benefit below an amount equal to the face amount of the contract at the time the contract was issued. Any individual variable life insurance contract may contain a provision for deduction from the death proceeds of amounts of due and unpaid premiums or of indebtedness which are appropriate to such contracts. The reserve liability for variable annuities shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees. [1973 1st ex.s. c 163 § 6; 1969 c 104 § 5.]

48.18A.060 Licensing requirement. No person shall be or act as an agent for the solicitation or sale of variable contracts except while duly appointed and licensed under the insurance code as a life insurance agent with respect to the insurer, and while duly licensed as a security salesman or securities broker under a license issued by the administrator of securities pursuant to the securities act of this state; except that any person who participates only in the sale or offering for sale of variable contracts which fund corporate plans meeting the requirements for qualification under sections 401 or 403 of the United States internal revenue code need not be

licensed pursuant to the securities act of this state. [1973 1st ex.s. c 163 § 7; 1969 c 104 § 6.]

48.18A.070 Authority of commissioner. Notwithstanding any other provision of law, the commissioner shall have sole and exclusive authority to regulate the issuance and sale of variable contracts; except for the examination, issuance or renewal, suspension or revocation, of a security salesman's license issued to persons selling variable contracts. To carry out the purposes and provisions of this chapter he may independently, and in concert with the state securities administrator, issue such reasonable rules and regulations as may be appropriate. [1969 c 104 § 7.]

48.18A.900 Effective date—1969 c 104. This 1969 act shall take effect July 1, 1969. [1969 c 104 § 10.]

Chapter 48.19 RATES

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Anti-compact law: RCW 48.30.020.

Discrimination prohibited: RCW 48.18.480.

Rate wars prohibited: RCW 48.30.240.

48.19.010 Scope of chapter. (1) Except as is otherwise expressly provided the provisions of this chapter apply to all insurances upon subjects located, resident or to be performed in this state except:

- (a) Life insurance;
- (b) disability insurance;
- (c) reinsurance except as to joint reinsurance as provided in RCW 48.19.360;
- (d) insurance against loss of or damage to aircraft, their hulls, accessories, and equipment, or against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft;
- (e) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity; and such other risks commonly insured under marine, as distinguished from inland marine, insurance contracts as may be defined by ruling of the commissioner for the purposes of this provision;
- (f) title insurance.

(2) Except, that every insurer shall, as to disability insurance, before using file with the commissioner its manual of classification, manual of rules and rates, and any modifications thereof. [1947 c 79 § .19.01; Rem. Supp. 1947 § 45.19.01.]

48.19.020 Rate standard. Premium rates for insurance shall not be excessive, inadequate, or unfairly discriminatory. This section does not apply to casualty insurance. [1947 c 79 § .19.02; Rem. Supp. 1947 § 45.19.02.]

48.19.030 Making of rates—Criteria. Rates shall be used, subject to the other provisions of this chapter, only if made in accordance with the following provisions:

(1) In the case of insurances under standard fire policies and that part of marine and transportation insurances not exempted under RCW 48.19.010, manual, minimum, class or classification rates, rating schedules or rating plans, shall be made and adopted; except as to specific rates on inland marine risks individually rated, which risks are not reasonably susceptible to manual or schedule rating, and which risks by general custom of the business are not written according to manual rates or rating plans.

(2) In the case of casualty and surety insurances:

(a) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(b) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may

measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(3) Due consideration in making rates for all insurances shall be given to:

(a) Past and prospective loss experience within and outside this state; and in the case of rates for fire insurance, to the loss experience of insurers as to insurance against fire during a period of not less than the most recent five-year period for which such experience is available.

(b) Conflagration and catastrophe hazards, where present.

(c) A reasonable margin for underwriting profit and contingencies.

(d) Dividends, savings and unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(e) All other relevant factors within and outside this state.

(4) In addition to other factors required by this section, rates filed by an insurer on its own behalf may also be related to the insurer's plan of operation and plan of risk classification.

(5) Except to the extent necessary to comply with RCW 48.19.020 uniformity among insurers in any matter within the scope of this section is neither required nor prohibited. [1947 c 79 § .19.03; Rem. Supp. 1947 § 45.19.03.]

48.19.040 Filing required. (1) Every insurer shall, before using, file with the commissioner every manual of classifications, manual of rules and rates, and every rating plan as to surety insurances, and every rating schedule, minimum rate, class rate, and rating rule as to other insurances, and every modification of any of the foregoing which it proposes. The insurer need not so file any rate on individually rated risks as described in subdivision (1) of RCW 48.19.030; except that any such specific rate made by a rating organization shall be filed. This section does not apply to casualty insurance.

(2) Every such filing shall state its proposed effective date and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this chapter, he may require the insurer to furnish the information upon which it supports the filing. An insurer may offer in support of any filing

(a) the experience or judgment of the insurer or rating organization making the filing,

(b) the experience of other insurers or rating organizations, or

(c) any other factors which the insurer or rating organization deems relevant. A filing and any supporting information shall be open to public inspection only after the filing becomes effective.

(3) Where a filing is required no insurer shall make or issue an insurance contract or policy except in accordance with its filing then in effect, except as is provided

by RCW 48.19.090. [1947 c 79 § .19.04; Rem. Supp. 1947 § 45.19.04.]

48.19.050 Filings by rating bureau. (1) If so authorized by an insurer, the commissioner shall accept, in lieu of filings by the insurer, filings on its behalf made by a rating organization then licensed as provided in this chapter.

(2) As to fire insurance under a standard form fire policy, and the following insurances (other than vehicle insurance coverages) when issued as part of a standard form fire policy, an insurer may so authorize a rating organization to make all its filings only, and may not make a portion of such filings upon its own behalf and authorize a rating organization to make other such filings:

(a) Additional property insurance coverages, or

(b) Coverages including any kind of insurance in addition to fire for a single undivided premium.

(3) Except, that notwithstanding the provisions of subsection (2) an insurer which prior to the first day of January, 1947, made its own filings in this state as to a particular class of fire risks, and its filings in this state as to other classes of fire risks were made by a rating organization authorized by the insurer so to do, may:

(a) Continue to make all its own filings as to such specific class of risks or authorize a rating organization to make its filings as to such specific class of risks or any part thereof, and

(b) authorize a different rating organization to make all only of its filings as to all other classes of risks insured by it in this state against fire under the standard form fire policy; or

(c) make all its own filings as to all classes of risks insured by it against fire under the standard form fire policy, or make all its own such filings except as to any which may relate to any such specific class of risks, which filings so excepted the insurer may authorize a rating organization to make; or

(d) authorize a rating organization to make all only of its filings as to all classes or risks insured by it against fire in this state under the standard form fire policy. [1957 c 193 § 13; 1947 c 79 § .19.05; Rem. Supp. 1947 § 45.19.05.]

48.19.060 Filings—Review, waiting period, disapproval. (1) The commissioner shall review a filing as soon as reasonably possible after made, to determine whether it meets the requirements of this chapter.

(2) Except as provided in RCW 48.19.070:

(a) No such filing shall become effective within fifteen days after date of filing with the commissioner, which period may be extended by the commissioner for an additional period not to exceed fifteen days if he gives notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of the filing. The commissioner may, upon application and for cause shown, waive such waiting period or any part thereof as to a filing which he has not disapproved.

(b) A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.

(3) This section does not apply to casualty insurance. [1947 c 79 § .19.06; Rem. Supp. 1947 § 45.19.06.]

48.19.070 Special filings. The following special filings, when not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and for so long thereafter as the filing remains in effect:

(1) Special filings with respect to surety or guaranty bonds required by law or by court or executive order or by order, rule or regulation of a public body.

(2) Specific rates on inland marine risks individually rated by a rating organization, which risks are not reasonably susceptible to manual or schedule rating, and which risks by general custom of the business are not written according to manual rates or rating plans. [1947 c 79 § .19.07; Rem. Supp. 1947 § 45.19.07.]

48.19.080 Waiver of filing. Under such rules and regulations as he shall adopt the commissioner may, by order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standard prescribed in RCW 48.19.020. [1947 c 79 § .19.08; Rem. Supp. 1947 § 45.19.08.]

48.19.090 Excess rates on specific risks. Upon written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk. [1947 c 79 § .19.09; Rem. Supp. 1947 § 45.19.09.]

48.19.100 Disapproval of filing. If within the waiting period or any extension thereof as provided in RCW 48.19.060, the commissioner finds that a filing does not meet the requirements of this chapter, he shall disapprove such filing, and shall give notice of such disapproval, specifying the respect in which he finds the filing fails to meet such requirements, and stating that the filing shall not become effective, to the insurer or rating organization which made the filing. This section does not apply to casualty insurance. [1947 c 79 § .19.10; Rem. Supp. 1947 § 45.19.10.]

48.19.110 Disapproval of special filing. (1) If within thirty days after a special filing subject to RCW 48.19.070 has become effective, the commissioner finds that the filing does not meet the requirements of this chapter, he shall disapprove the filing and shall give notice to the insurer or rating organization which made the filing, specifying in what respects he finds that the filing

fails to meet such requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective.

(2) Such disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval. [1947 c 79 § .19.11; Rem. Supp. 1947 § 45.19.11.]

48.19.120 Subsequent disapproval. (1) If at any time subsequent to the applicable review period provided in RCW 48.19.060 or 48.19.110, the commissioner finds that a filing does not meet the requirements of this chapter, he shall, after a hearing, notice of which was given to every insurer and rating organization which made such filing, issue his order specifying in what respect he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filings shall be deemed no longer effective. This subsection does not apply to casualty insurance.

(2) Such order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(3) Any person aggrieved with respect to any filing then in effect, other than the insurer or rating organization which made the filing, may make written application to the commissioner for a hearing thereon. The application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding the hearing, he shall, within thirty days after receipt of the application, hold a hearing as required in subsection (1) of this section. [1947 c 79 § .19.12; Rem. Supp. 1947 § 45.19.12.]

48.19.140 Rating organizations—Discrimination—"Subscriber" defined. (1) Every rating organization operating in this state shall furnish its services without discrimination as between its subscribers.

(2) "Subscriber," for the purposes of this chapter and where the context does not otherwise specify, means any insurer which employs the services of a rating organization for the purpose of making filings, whether or not the insurer is a "member" of such rating organization.

(3) This chapter is not intended to and does not govern or affect the "membership" relation as such between a rating organization and insurers who are its "members." [1947 c 79 § .19.14; Rem. Supp. 1947 § 45.19.14.]

48.19.150 Subscribership not required. No provision of this code shall require, or be deemed to require, any insurer to be a subscriber of, or in any other respect affiliated with, any rating organization. [1947 c 79 § .19.15; Rem. Supp. 1947 § 45.19.15.]

48.19.160 Rating organization license. No rating organization shall do business in this state or make filings with the commissioner unless then licensed by the commissioner as a rating organization. [1947 c 79 § .19.16; Rem. Supp. 1947 § 45.19.16.]

48.19.170 Application for license. (1) Any person, whether domiciled within or outside this state, except as provided in subsection (2) of this section, may make application to the commissioner for a license as a rating organization for such kinds of insurance or subdivisions thereof, if for casualty or surety insurances, or for such subdivision, class of risks or a part or combination thereof, if for other insurances, as are specified in its application, and shall file therewith:

(a) A copy of its constitution, its articles of agreement or association, or its certificate of incorporation, or trust agreement, and of its bylaws, rules and regulations governing the conduct of its business;

(b) A list of its members and a list of its subscribers;

(c) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served, and

(d) A statement of its qualifications as a rating organization.

(2) Any rating organization proposing to act as such as to insurance under standard form fire policies, shall be licensed only if all the following conditions are complied with:

(a) The applicant and the operators of such rating organization shall be domiciled in and shall actually reside in this state.

(b) The ownership of such rating organization shall be vested in trustees for all its subscribers under such trust agreement as is approved by the commissioner, and the rating organization shall be and shall be conducted as a nonprofit public service institution.

(c) Such rating organization shall not be connected with any insurer or insurers except to the extent that any such insurer may be a subscriber to its services. [1947 c 79 § .19.17; Rem. Supp. 1947 § 45.19.17.]

48.19.180 Issuance of license. (1) If the commissioner finds that the applicant for a license as a rating organization is competent, trustworthy and otherwise qualified so to act, and that its constitution, articles of agreement or association or certificate of incorporation or trust agreement, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall, upon payment of a license fee of twenty-five dollars, issue a license specifying the kinds of insurance, or subdivisions or class of risk or part or combination thereof for which the applicant is authorized to act as a rating organization.

(2) The commissioner shall grant or deny in whole or in part every such application within sixty days of the date of its filing with him.

(3) A license issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. [1947 c 79 § .19.18; Rem. Supp. 1947 § 45.19.18.]

48.19.190 Suspension or revocation of license. (1) The commissioner may, after a hearing, suspend or revoke the license issued to a rating organization for any of the following causes:

(a) If he finds that the licensee no longer meets the qualifications for the license.

(b) For failure to comply with an order of the commissioner within the time limited by the order, or any extension thereof which the commissioner may grant.

(2) The commissioner shall not so suspend or revoke a license for failure to comply with an order until the time prescribed by this code for an appeal from such order to the superior court has expired or if such appeal has been taken, until such order has been affirmed.

(3) The commissioner may determine when a suspension or revocation of license shall become effective. A suspension of license shall remain in effect for the period fixed by him, unless he modifies or rescinds the suspension, or until the order, failure to comply with which constituted grounds for the suspension, is modified, rescinded or reversed. [1947 c 79 § .19.19; Rem. Supp. 1947 § 45.19.19.]

48.19.200 Notice of changes. Every rating organization shall notify the commissioner promptly of every change in

(1) its constitution, its articles of agreement or association, or its certificate of incorporation, or trust agreement, and its bylaws, rules and regulations governing the conduct of its business;

(2) its list of members and subscribers;

(3) the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served. [1947 c 79 § .19.20; Rem. Supp. 1947 § 45.19.20.]

48.19.210 Subscribers—Rights, limitations. (1) Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer to subscribe to its rating services for any kind of insurance or subdivision thereof, for which it is authorized to act as a rating organization, subject to subsection (2) of RCW 48.19.050.

(2) Notice of proposed changes in such rules and regulations shall be given to each subscriber.

(3) An insurer shall not concurrently be a subscriber to the services of more than one rating organization as to the same subdivision, class of risk or part or combination of a kind of insurance.

(4) As to fire insurance under standard form fire policies, an insurer may not concurrently be a subscriber to the services of more than one rating organization except as provided in subsection (2) of RCW 48.19.050. [1947 c 79 § 19.21; Rem. Supp. 1947 § 45.19.21.]

48.19.220 Review of rules and refusal to admit insurers. (1) The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing

held upon notice to the rating organization, and to the subscriber or insurer.

(2) If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers who are not members of the rating organization.

(3) If a rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action. [1947 c 79 § .19.22; Rem. Supp. 1947 § 45.19.22.]

48.19.230 Subscriber committees. The subscribers of any rating organization may, from time to time, individually or through committees representing various subscribers, consult with the rating organization with respect to matters within this chapter which affect such subscribers. [1947 c 79 § .19.23; Rem. Supp. 1947 § 45.19.23.]

48.19.240 Rules cannot affect dividends. No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. [1947 c 79 § .19.24; Rem. Supp. 1947 § 45.19.24.]

48.19.250 Cooperative activities. (1) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, if the filings resulting from such cooperation are subject to all the provisions of this chapter which are applicable to filings generally.

(2) The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this code, he may issue a written order specifying in what respect such activity or practice is so unfair, unreasonable, or inconsistent, and requiring the discontinuance of such activity or practice. [1947 c 79 § .19.25; Rem. Supp. 1947 § 45.19.25.]

48.19.260 Technical services. Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all subscribers without discrimination. [1947 c 79 § .19.26; Rem. Supp. 1947 § 45.19.26.]

48.19.270 Records—Examinations. Each rating organization shall keep an accurate and complete record of all work performed by it, and of all its receipts and disbursements. Such rating organization and

its records shall be examined by the commissioner at such times and in such manner as is provided in chapter 48.03 RCW of this code. [1947 c 79 § .19.27; Rem. Supp. 1947 § 45.19.27.]

48.19.280 Deviations. (1) Every subscriber to a rating organization shall adhere to the filings made on its behalf by such organization, and shall not deviate therefrom except as provided in this section.

(2) Any such subscriber may make written application to the commissioner for permission to file a deviation, and shall at the same time send a copy of the application to the rating organization. The application shall specify the deviation desired, and the basis thereof. In the case of deviations as specified in subsection (4) of this section, the application shall be accompanied by the data upon which the applicant relies. The commissioner shall forthwith set a date for a hearing on the application and give notice thereof to the applicant and to the rating organization. If the rating organization informs the commissioner that it does not desire a hearing he may, upon consent of the applicant, waive the hearing.

(3) As to fire insurance under standard form fire policies, and the following insurances when issued as part of a standard form fire policy, any such deviation shall be only by a uniform percentage of addition to or decrease from all rates resulting from all filings relative to such insurance made by the rating organization on behalf of such applicant and then in effect:

(a) Additional property insurance coverages, or

(b) Coverages including any kind of insurance in addition to fire for a single undivided premium.

In considering the application for permission to file such deviation the commissioner shall give consideration to the available statistics and the applicable principles for rate making as provided in RCW 48.19.030.

(4) As to insurance other than that designated in subsection (3) of this section, any such deviation shall be only by a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance, or for a class of insurance which is found by the commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance (a) comprised of a group of manual classifications which is treated as a separate unit for rate making purposes, or (b) for which separate expense provisions are included in the filings of the rating organization.

(5) If upon such hearing the commissioner finds the proposed deviation to be justified, and that premiums and rates resulting therefrom would not be inadequate, excessive, or unfairly discriminatory, he shall issue his order permitting the deviation to be filed and such deviation shall thereupon become effective. If he finds otherwise, he shall issue his order denying the application.

(6) Each deviation permitted to be filed shall be effective for a period of not less than one year from the date of such permission unless terminated sooner with the approval of the commissioner. Every such deviation

shall terminate upon a material change of the basic rate from which the deviation is made. The commissioner shall determine whether a change of the basic rate is so material as to require such termination of deviations.

(7) This section does not apply to casualty insurance. [1957 c 193 § 14; 1947 c 79 § .19.28; Rem. Supp. 1947 § 45.19.28.]

48.19.290 Appeal from rating organization's action.

(1) Any subscriber to a rating organization may appeal to the commissioner from the rating organization's action or decision in approving or rejecting any proposed change in or addition to the rating organization's filings. The commissioner shall, after a hearing on the appeal:

(a) Issue an order approving the rating organization's action or decision or directing it to give further consideration to such proposal; or

(b) If the appeal is from the rating organization's action or decision in rejecting a proposed addition to its filings, he may, in event he finds that the action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

(2) If such appeal is based upon the rating organization's failure to make a filing on behalf of such subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in subdivision (2) of RCW 48.19.030, from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding the appeal the commissioner shall apply the standards set forth in RCW 48.19.020 and 48.19.030. [1947 c 79 § .19.29; Rem. Supp. 1947 § 45.19.29.]

48.19.300 Service to insureds. Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. [1947 c 79 § .19.30; Rem. Supp. 1947 § 45.19.30.]

48.19.310 Complaints of insureds. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing

held upon notice to the appellant and to the rating organization or insurer, may affirm or reverse such action. [1947 c 79 § .19.31; Rem. Supp. 1947 § 45.19.31.]

48.19.320 Advisory organizations—Definition. (1) Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

(2) This section does not apply to subscribers' committees provided for in RCW 48.19.230. [1947 c 79 § .19.32; Rem. Supp. 1947 § 45.19.32.]

48.19.330 Requisites of advisory organization. Every advisory organization before serving as such to any rating organization or independently filing insurer doing business in this state, shall file with the commissioner:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities;

(2) A list of its members;

(3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served; and

(4) An agreement that the commissioner may examine such advisory organization in accordance with the provisions of RCW 48.03.010. [1947 c 79 § .19.33; Rem. Supp. 1947 § 45.19.33.]

48.19.340 Desist orders. If, after a hearing, the commissioner finds that the furnishing of information or assistance by an advisory organization, as referred to in RCW 48.19.320, involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this code, he may issue a written order specifying in what respect such act or practice is unfair or unreasonable or so otherwise inconsistent, and requiring the discontinuance of such act or practice. [1947 c 79 § .19.34; Rem. Supp. 1947 § 45.19.34.]

48.19.350 Disqualification of data. No insurer which makes its own filing nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this chapter or with any order of the commissioner involving such statistics or recommendations issued under RCW 48.19.340. If the commissioner finds such insurer or rating organization to be in violation of this section he may issue an order requiring the discontinuance of the violation. [1947 c 79 § .19.35; Rem. Supp. 1947 § 45.19.35.]

48.19.360 Joint underwriting or joint reinsurance. (1) Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as is provided in this section, subject, however, with respect to joint underwriting, to all other provisions of

this chapter, and, with respect to joint reinsurance, to RCW 48.19.270, 48.01.080 and 48.19.430; and to chapter 48.03 RCW of this code.

(2) If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair, or unreasonable or so inconsistent, and requiring the discontinuance of the activity or practice. [1947 c 79 § .19.36; Rem. Supp. 1947 § 45.19.36.]

48.19.370 Recording and reporting of loss and expense experience. (1) The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in RCW 48.19.020 and 48.19.030. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience.

(2) In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states.

(3) No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it.

(4) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

(5) Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans. [1947 c 79 § .19.37; Rem. Supp. 1947 § 45.19.37.]

48.19.380 Exchange of information. Every rating organization and insurer may exchange information and experience data with insurers and rating organizations in this and other states and may consult with them with respect to rate making and the application of rating systems. [1947 c 79 § .19.38; Rem. Supp. 1947 § 45.19.38.]

48.19.390 False or misleading information. No person shall wilfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer,

which will affect the rates or premiums chargeable under this chapter. [1947 c 79 § .19.39; Rem. Supp. 1947 § 45.19.39.]

48.19.400 Assigned risks. Agreements may be made among casualty insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner. [1947 c 79 § .19.40; Rem. Supp. 1947 § 45.19.40.]

48.19.410 Examination of contracts. (1) The commissioner may permit the organization and operation of examining bureaus for the examination of policies, daily reports, binders, renewal certificates, endorsements, and other evidences of insurance or of the cancellation thereof, for the purpose of ascertaining that lawful rates are being charged.

(2) A bureau shall examine documents with regard to such kinds of insurance as the commissioner may, after hearing, reasonably require to be submitted for examination. A bureau may examine documents as to such other kinds of insurance as the issuing insurers may voluntarily submit for examination.

(3) No bureau shall operate unless licensed by the commissioner as to the kinds of insurance as to which it is permitted so to examine. To qualify for a license a bureau shall:

(a) Be owned in trust for the benefit of all the insurers regularly using its services, under a trust agreement approved by the commissioner.

(b) Make its services available without discrimination to all authorized insurers applying therefor, subject to such reasonable rules and regulations as to the obligations of insurers using its services, as to the conduct of its affairs, and as to the correction of errors and omissions in documents examined by it as are approved by the commissioner.

(c) Have no manager or other employee who is connected with any rating organization, or who is an employee of an insurer other than to the extent that he is an employee of the bureau owned by insurers through such trust agreement.

(d) Pay to the commissioner a fee of ten dollars for issuance of its license.

(4) Such license shall be of indefinite duration and shall remain in force until revoked by the commissioner or terminated at the request of the bureau. The commissioner may revoke the license, after hearing,

(a) if the bureau is no longer qualified therefor;

(b) if the bureau fails to comply with a proper order of the commissioner;

(c) if the bureau violates or knowingly participates in the violation of any provision of this code.

(5) Any person aggrieved by any rule, regulation, act or omission of a bureau may appeal to the commissioner therefrom. The commissioner shall hold a hearing

upon such appeal, and shall make such order upon the hearing as he deems to be proper.

(6) Every such bureau operating in this state shall be subject to the supervision of the commissioner, and the commissioner shall examine it as provided in chapter 48.03 RCW of this code.

(7) Every examining bureau shall keep adequate records of the outstanding errors and omissions found in coverages examined by it and of its receipts and disbursements, and shall hold as confidential all information contained in documents submitted to it for examination.

(8) The commissioner shall not license an additional bureau for the examination of documents relative to a kind of insurance if such documents are being examined by a then existing licensed bureau. Any examining bureau operating in this state immediately prior to the effective date of this code under any law of this state repealed as of such date, shall have prior right to apply for and secure a license under this section. [1947 c 79 § .19.41; Rem. Supp. 1947 § 45.19.41.]

48.19.420 Rate agreements. Two or more insurers mutually may agree to adhere to rates, rating plans, rating systems or underwriting practices or uniform modifications thereof, all subject to the following conditions:

(1) All of the terms of the agreements shall be in writing executed on behalf of each such insurer.

(2) An executed copy of every such written agreement and of every modification thereof shall be filed with the commissioner.

(3) Within a reasonable length of time after every such filing, the commissioner shall either approve or disapprove such agreement or modification. No such agreement or modification shall be effective unless and until approved by the commissioner.

(4) The commissioner shall not approve any such agreement or modification which:

(a) Constitutes or would tend to result in an unreasonable restraint upon free competition;

(b) contains terms otherwise tending to injure the public interest.

(5) No cause of action shall lie in favor of any insurer which is party to any such agreement against any other insurer party thereto on account of any breach thereof.

(6) All rate filings covered by such agreement shall be subject to the provisions of this chapter or of other applicable law.

(7) The commissioner may after a hearing thereon and for cause withdraw any approval previously given any such agreement or modification. [1947 c 79 § .19.42; Rem. Supp. 1947 § 45.19.42.]

48.19.430 Penalties. Any person violating any provision of this chapter shall be subject to a penalty of not more than fifty dollars for each such violation, but if such violation is found to be wilful a penalty of not more than five hundred dollars for each such violation may be imposed. Such penalties may be in addition to any other penalty provided by law. [1947 c 79 § .19.43; Rem. Supp. 1947 § 45.19.43.]

48.19.440 Casualty insurance rates. Every insurer as to casualty insurance shall file with the commissioner its rates and rating schedules, or it may adopt advisory rules and rates of rating organizations. Unless disapproved by the commissioner prior thereto, any such filing shall become effective upon expiration of thirty days from date of filing.

Every such insurer and its agents shall adhere to its filings, and shall not amend such filings or deviate therefrom until it shall have filed amendatory schedules or rates or notice of such deviation with the commissioner for a period of thirty days; except that such amendatory schedules or deviations shall not become effective if disapproved by the commissioner within such thirty-day period.

The commissioner may waive any such waiting period or any part thereof as to any filing by giving notice thereof to the insurer. [1947 c 79 § .34.02; Rem. Supp. 1947 § 7118.]

Chapter 48.20 DISABILITY INSURANCE

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- 48.20.282 Order of certain policy provisions.
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Assignment of policies: RCW 48.18.360.

Exemption of proceeds: RCW 48.18.400.

General provisions regarding filing, approval, contents of policies, execution, applications, etc.: Chapter 48.18 RCW.

Grounds for disapproval of policy forms: RCW 48.18.110.

Insurable interest, personal insurance: RCW 48.18.030.

Minimum standard conditions and terminology for disability policies may be established by commissioner: RCW 48.18.120(2).

Minor may contract for life or disability insurance: RCW 48.18.020.

Payment to person designated in policy or by assignment discharges insurer: RCW 48.18.370.

Rates, manuals, classifications—Filing: RCW 48.19.010(2).

Refusal to renew or cancellation of disability insurance: RCW 48.18.298, 48.18.299.

48.20.002 Scope of chapter. Nothing in this chapter shall apply to or affect (1) any policy of workmen's compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group policy of insurance; or (4) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract. [1951 c 229 § 1.]

Reviser's note: For prior laws governing standard provision requirements for individual accident or health insurance policies see: 1947 c 79 §§ .20.01–.20.33 and .20.37; Rem. Supp. 1947 §§ 45.20.01–45.20.33 and 45.20.37.

Many of the sections enacted in 1951 c 229 are in substance amendatory of sections theretofore appearing in chapter 48.20 RCW, although they appear in 1951 c 229 as new sections. To assist those using the code the prior enactment on the same subject is shown in the history note following the new section wherever practicable.

48.20.012 Format of disability policies. No disability policy shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code, and complies with the following:

(1) It shall purport to insure only one person, except as to family expense insurance written pursuant to RCW 48.20.340.

(2) The style, arrangement and over-all appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower-case unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and caption and subcaptions).

(3) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in RCW 48.20.042 to 48.20.272, inclusive, shall be printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies.

(4) Each such form, including riders and endorsements, shall be identified by a form number in the lower left hand corner of the first page thereof.

(5) It shall contain no provision purporting to make any portion of the insurer's charter, rules, constitution, or bylaws a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner. [1951 c 229 § 2; 1947 c 79 § .20.02; formerly Rem. Supp. 1949 § 45.20.02.]

48.20.013 Return of policy and refund of premium—Notice of right to be printed on or attached to policy—Effect of return. Every individual disability insurance policy issued after January 1, 1968, except single premium nonrenewable policies, shall have printed on its face or attached thereto a notice stating in substance that the person to whom the policy is issued shall be permitted to return the policy within ten days of its delivery to the purchaser and to have the premium paid refunded if, after examination of the policy, the purchaser is not satisfied with it for any reason. If a policyholder or purchaser pursuant to such notice, returns the policy to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. [1967 c 150 § 26.]

48.20.022 Policies issued by domestic insurer for delivery in another state. If any policy is issued by a domestic insurer for delivery to a person residing in another state, and if the insurance commissioner or

corresponding public official of such other state has advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that such policy meet the applicable standards set forth in this chapter and in chapter 48.18 RCW. [1951 c 229 § 3.]

48.20.032 Standard provisions required—Substitutions—Captions. Except as provided in RCW 48.18.130, each such policy delivered or issued for delivery to any person in this state shall contain the provisions as specified in RCW 48.20.042 to 48.20.152, inclusive, in the words in which the same appear; except, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision shall be preceded by the applicable caption shown or, at the insurer's option, by such appropriate individual or group caption or subcaption as the commissioner may approve. [1951 c 229 § 4; 1947 c 79 § .20.03; formerly Rem. Supp. 1947 § 45.20.03.]

48.20.042 Standard provision No. 1—Entire contract; changes. There shall be a provision as follows:

ENTIRE CONTRACTS; CHANGES: This policy, including the endorsements and attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions. [1951 c 229 § 5. Prior law: (i) 1947 c 79 § .20.05; Rem. Supp. 1947 § 45.20.05. (ii) 1947 c 79 § .20.06; Rem. Supp. 1947 § 45.20.06.]

48.20.052 Standard provision No. 2—Time limit on certain defenses. There shall be a provision as follows:

TIME LIMIT ON CERTAIN DEFENSES: (a) After two years from the date of issue of this policy no misstatements except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two year period, nor to limit the application of RCW 48.20.172, 48.20.182, 48.20.192, 48.20.202, and 48.20.212 in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE":

"After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.")

(b) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy. (More stringent provisions may be required by the commissioner in connection with individual disability policies sold without any application or with minimal applications.) [1973 1st ex.s. c 152 § 4; 1969 ex.s. c 241 § 12; 1951 c 229 § 6.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.20.062 Standard provision No. 3—Grace period. There shall be a provision as follows:

GRACE PERIOD: A grace period of ----- (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies, and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision: "subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.")

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision: "Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.") [1951 c 229 § 7.]

48.20.072 Standard provision No. 4—Reinstatement. There shall be a provision as follows:

REINSTATEMENT: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy: *Provided, however,* That if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of

reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.) [1951 c 229 § 8; 1947 c 79 § .20.07; formerly Rem. Supp. 1947 § 45.20.07.]

48.20.082 Standard provision No. 5—Notice of claim. There shall be a provision as follows:

NOTICE OF CLAIM: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at ----- (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.") [1951 c 229 § 9. Prior law: 1947 c 79 § .20.08; Rem. Supp. 1947 § 45.20.08.]

48.20.092 Standard provision No. 6—Claim forms. There shall be a provision as follows:

CLAIM FORMS: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed

in the policy for filing proofs of loss written proof covering the occurrence, the character and the extent of the loss for which claim is made. [1951 c 229 § 10; 1947 c 79 § .20.10; formerly Rem. Supp. 1947 § 45.20.10.]

Furnishing claim forms does not constitute waiver of any defense by insurer: RCW 48.18.470.

Insurer has no responsibility as to completion of claim forms: RCW 48.18.460.

48.20.102 Standard provision No. 7—Proofs of loss. There shall be a provision as follows:

PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required. [1951 c 229 § 11. Prior: (i) 1947 c 79 § .20.11; Rem. Supp. 1947 § 45.20.11. (ii) 1947 c 79 § .20.09, part; Rem. Supp. 1947 § 45.20.09, part.]

48.20.112 Standard provision No. 8—Time of payment of claims. There shall be a provision as follows:

TIME OF PAYMENT OF CLAIMS: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid ----- (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof. [1951 c 229 § 12. Prior: (i) 1947 c 79 § .20.13; Rem. Supp. 1947 § 45.20.13. (ii) 1947 c 79 § .20.14; Rem. Supp. 1947 § 45.20.14.]

48.20.122 Standard provision No. 9—Payment of claims. (1) There shall be a provision as follows:

PAYMENT OF CLAIMS: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(2) The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$_____ (insert an amount which shall not exceed \$1000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment."

"Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person." [1951 c 229 § 13. Prior: 1947 c 79 § .20.15; Rem. Supp. 1947 § 45.20.15.]

Proceeds of disability policy are exempt from creditors: RCW 48.18.400.

48.20.132 Standard provision No. 10—Physical examination and autopsy. There shall be a provision as follows:

PHYSICAL EXAMINATIONS AND AUTOPSY: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law. [1951 c 229 § 14. Prior: 1947 c 79 § .20.12; Rem. Supp. 1947 § 45.20.12.]

48.20.142 Standard provision No. 11—Legal actions. There shall be a provision as follows:

LEGAL ACTIONS: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished. [1951 c 229 § 15. Prior: 1947 c 79 § .20.18; Rem. Supp. 1947 § 45.20.18.]

48.20.152 Standard provision No. 12—Change of beneficiary. There shall be a provision as follows:

CHANGE OF BENEFICIARY: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.) [1951 c 229 § 16. Prior: 1947 c 79 § .20.17; Rem. Supp. 1947 § 45.20.17.]

48.20.162 Optional standard provisions. Except as provided in RCW 48.18.130, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth in RCW 48.20.172 to 48.20.272, inclusive, unless such provisions are in the words in which the same appear in the applicable section; except, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the insurer's option, by such appropriate individual or group caption or subcaption as the commissioner may approve. [1951 c 229 § 17. Prior: 1947 c 79 § .20.20; Rem. Supp. 1947 § 45.20.20.]

48.20.172 Optional standard provision No. 13—Change of occupation. There may be a provision as follows:

CHANGE OF OCCUPATION: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation. [1951 c 229 § 18.]

48.20.182 Optional standard provision No. 14—Misstatement of age. There may be a provision as follows:

MISSTATEMENT OF AGE: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age. [1951 c 229 § 19. Prior: 1947 c 79 § .20.28; Rem. Supp. 1947 § 45.20.28.]

48.20.192 Optional standard provision No. 15—Other insurance in this insurer. There may be a provision as follows:

OTHER INSURANCE IN THIS INSURER: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for _____ (insert type of coverage or coverages) in excess of \$_____ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies. [1951 c 229 § 20. Prior: 1947 c 79 § .20.24; Rem. Supp. 1947 § 45.20.24.]

48.20.202 Optional standard provision No. 16—Insurance with other insurers (Provision of service or expense incurred basis). (1) There may be a provision as follows:

INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in RCW 48.20.212, there shall be added to the caption of the foregoing provision the phrase "_____ expense incurred benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include

group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage." [1951 c 229 § 21. Prior: 1947 c 79 § .20.22; Rem. Supp. 1947 § 45.20.22.]

48.20.212 Optional standard provision No. 17—Insurance with other insurers. (1) There may be a provision as follows:

INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in RCW 48.20.202, there shall be added to the caption of the foregoing provision the phrase "_____ other benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage." [1951 c 229 § 22. Prior: 1947 c 79 § .20.22; Rem. Supp. 1947 § 45.20.22.]

48.20.222 Optional standard provision No. 18—Relation of earnings to insurance. (1) There may be a provision as follows:

RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(2) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age 50 or, (b) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations. [1951 c 229 § 23.]

48.20.232 Optional standard provision No. 19—Unpaid premium. There may be a provision as follows:

UNPAID PREMIUM: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom. [1951 c 229 § 24. Prior: 1947 c 79 § .20.23; Rem. Supp. 1947 § 45.20.23.]

48.20.242 Optional standard provision No. 20—Cancellation. There may be a provision as follows:

CANCELLATION: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation. [1951 c 229 § 25. Prior: 1947 c 79 § .20.21; Rem. Supp. 1947 § 45.20.21.]

48.20.252 Optional standard provision No. 21—Conformity with state statutes. There may be a provision as follows:

CONFORMITY WITH STATE STATUTES: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes. [1951 c 229 § 26.]

48.20.262 Optional standard provision No. 22—Illegal occupation. There may be a provision as follows:

ILLEGAL OCCUPATION: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation. [1951 c 229 § 27. Prior: 1947 c 79 § .20.26; Rem. Supp. 1947 § 45.20.26.]

48.20.272 Optional standard provision No. 23—Intoxicants and narcotics. There may be a provision as follows:

INTOXICANTS AND NARCOTICS: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician. [1951 c 229 § 28. Prior: 1947 c 79 § .20.27; Rem. Supp. 1947 § 45.20.27.]

48.20.282 Order of certain policy provisions. The provisions which are the subject of RCW 48.20.042 to 48.20.272, inclusive, or any corresponding provisions which are used in lieu thereof in accordance with such sections, shall be printed in the consecutive order of the provisions in such sections or, at the insurer's option, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not

be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued. [1951 c 229 § 29.]

48.20.292 Third party ownership. The word "insured," as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein. [1951 c 229 § 30.]

Insurable interest defined, personal insurance: RCW 48.18.030.

48.20.302 Requirements of other jurisdictions. (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or to the beneficiary than the provisions of this chapter and which is prescribed or required by the laws of the state under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country. [1951 c 229 § 31.]

Domestic insurer may transact insurance in other state as permitted by laws thereof: RCW 48.07.140.

48.20.312 Age limit. If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy. [1951 c 229 § 32. Prior: 1947 c 79 § .20.25; Rem. Supp. 1947 § 45.20.25.]

48.20.322 Effective date of standard provision and certain other sections—Five year period. The provisions contained in RCW 48.20.002 to 48.20.322, inclusive, shall take effect on September 1, 1951. A policy, rider or endorsement, which could have been lawfully used or delivered or issued for delivery to any person in this state immediately before such effective date may be used or delivered or issued for delivery to any such person during five years after such effective date. [1951 c 229 § 33.]

48.20.340 "Family expense disability insurance" defined. (1) Family expense disability insurance is that covering members of any one family including one or both spouses and dependents provided under a master policy issued to the head of the family.

(2) Any authorized disability insurer may issue family expense disability insurance.

(3) A disability policy providing such family expense coverage, in addition to other provisions required to be contained in disability policies under this chapter, shall contain the following provisions:

(a) A provision that the policy and the application of the head of the family shall constitute the entire contract between the parties.

(b) A provision that to the family group originally insured shall, on notice to the insurer, be added from time to time all new members of the family as they become eligible for insurance in such family group, and on the payment of such additional premium as may be required therefor. [1961 c 194 § 5; 1947 c 79 § .20.34; Rem. Supp. 1947 § 45.20.34.]

48.20.350 "Franchise plan" defined. (1) Disability insurance on a franchise plan is that issued to

(a) five or more employees of a common employer, or to

(b) ten or more members of any bona fide trade or professional association or labor union, which association or union was formed and exists for purposes other than that of obtaining insurance, and under which such employees or members, with or without their dependents, are issued individual policies which may vary as to amounts and kinds of coverage as applied for, under an arrangement whereby the premiums on the policies are to be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association, or by some designated employee or officer of the association acting on behalf of the employer or association members.

(2) An insurer may charge different rates, provide different benefits, or employ different underwriting procedure for individuals insured under a franchise plan, if such rates, benefits, or procedures as used do not discriminate as between franchise plans, and do not discriminate unfairly as between individuals insured under franchise plans and individuals otherwise insured under similar policies. [1947 c 79 § .20.35; Rem. Supp. 1947 § 45.20.35.]

48.20.360 Extended disability benefit. A disability insurance contract which provides a reasonable amount of disability indemnity for both accidental injuries and sickness, other than a contract of group or blanket insurance, may provide a benefit in amount not exceeding two hundred dollars payable in event of death from any causes. Such benefit shall be deemed to constitute the payment of disability benefits beyond the period for which otherwise payable, and shall not be deemed to constitute life insurance. [1947 c 79 § .20.36; Rem. Supp. 1947 § 45.20.36.]

48.20.380 Incontestability after reinstatement. The reinstatement of any policy of noncancellable disability insurance hereafter delivered or issued for delivery in this state shall be contestable only on account of fraud

or misrepresentation of facts material to the reinstatement and only for the same period following reinstatement as is provided in the policy with respect to the contestability thereof after the original issuance of the policy. [1947 c 79 § .20.38; Rem. Supp. 1947 § 45.20.38.]

48.20.390 Benefits for services performed by licensed chiroprodists. Notwithstanding any provision of any disability insurance contract, benefits shall not be denied thereunder for any medical or surgical service performed by a holder of a license issued pursuant to chapter 18.22 RCW provided that (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW. [1963 c 87 § 1.]

Construction—1963 c 87: "This act shall apply to all contracts issued on or after the effective date of this act." [1963 c 87 § 3.] This applies to RCW 48.20.390 and 48.21.130. The effective date of this act was June 13, 1963 (midnight June 12), see preface, 1963 session laws.

48.20.410 Benefits for services performed by licensed optometrists. Notwithstanding any provision of any disability insurance contract, benefits shall not be denied thereunder for any eye care service rendered by a holder of a license issued pursuant to chapter 18.53 RCW, provided, that (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1965 c 149 § 2.]

Construction—1965 c 149: "Sections 1 through 3 of this act shall not apply to contracts in force prior to the effective date of this 1965 act, nor to any renewal of such contracts where there has been no change in any provisions thereof." [1965 c 149 § 4.] This applies to RCW 48.20.410 and 48.21.140. The effective date of this 1965 act was June 10, 1965.

48.20.411 Benefits for services performed by registered nurses. Notwithstanding any provision of any disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health care service performed by a holder of a license issued pursuant to chapter 18.88 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: *Provided, however,* That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1973 1st ex.s. c 188 § 3.]

Severability—1973 1st ex.s. c 188: See note following RCW 48.18.298.

48.20.412 Benefits for services performed by licensed chiropractors. Notwithstanding any provision of any disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any

health care service performed by a holder of a license issued pursuant to chapter 18.25 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: *Provided, however,* That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1971 ex.s. c 13 § 1.]

Severability—1971 ex.s. c 13: See RCW 48.31A.900.

48.20.414 Benefits for services performed by licensed psychologists. Notwithstanding any provision of any disability insurance contract, benefits shall not be denied thereunder for any psychological service rendered by a holder of a license issued pursuant to chapter 18.83 RCW: *Provided,* That (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1971 ex.s. c 197 § 1.]

Application—1971 ex.s. c 197: "Sections 1 and 2 of this act shall not apply to any contract in force prior to the effective date of this 1971 act, nor to any renewal of such contract where there has been no change in any provision thereof." [1971 ex.s. c 197 § 3.] This applies to RCW 48.20.414 and 48.21.144.

48.20.416 Benefits for services performed by licensed dentists. Notwithstanding any provision of any disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health care service performed by a holder of a license issued pursuant to chapter 18.32 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service has [had] been performed by a holder of a license issued [pursuant] to chapter 18.71 RCW: *Provided, however,* That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1974 1st ex.s. c 42 § 1.]

48.20.420 Coverage of dependent child not to terminate if child mentally or physically handicapped. Any disability insurance contract providing health care services, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract, shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (2) chiefly

dependent upon the subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer by the subscriber within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1969 ex.s. c 128 § 3.]

48.20.430 Coverage of dependent children to include newborn infants and congenital anomalies from moment of birth. Any disability insurance contract providing hospital and medical expenses and health care services, delivered or issued for delivery in this state more than one hundred twenty days after February 16, 1974, which provides coverage for dependent children of the insured, shall provide coverage for newborn infants of the insured from and after the moment of birth. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth. [1974 1st ex.s. c 139 § 1.]

Chapter 48.21

GROUP AND BLANKET DISABILITY INSURANCE

Sections

- 48.21.010 "Group disability insurance" defined.
- 48.21.020 "Employees," "employer" defined.
- 48.21.030 Health care groups.
- 48.21.040 "Blanket disability insurance" defined.
- 48.21.050 Standard provisions required.
- 48.21.060 The contract—Representations.
- 48.21.070 Payment of premiums.
- 48.21.080 Certificates of coverage.
- 48.21.090 Age limitations.
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- 48.21.140 Benefits for services performed by licensed optometrists.
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- 48.21.146 Benefits for services performed by licensed dentists.
- 48.21.150 Coverage of dependent child not to terminate if child mentally or physically handicapped.
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- 48.21.160 Alcoholism treatment benefits—Legislative declaration.
- 48.21.170 Alcoholism treatment benefits—Provisions of contracts issued or renewed July 1, 1974–January 1, 1975.
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- 48.21.190 Alcoholism treatment benefits—RCW 48.21.160–48.21.190, 48.44.240 inapplicable where contract provides for right of renewal without change.

Irrigation district may contract for and pay premiums on group insurance for employees: RCW 87.03.160.

Minimum standards for disability policies may be promulgated by commissioner: RCW 48.18.120.

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Policy dividends are payable to real party in interest: RCW 48.18.340.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

Refusal to renew or cancellation of disability insurance: RCW 48.18.298, 48.18.299.

48.21.010 "Group disability insurance" defined. Group disability insurance is that form of disability insurance provided by a master policy issued to an employer, to a trustee appointed by an employer or employers, or to an association of employers formed for purposes other than obtaining such insurance, covering, with or without their dependents, the employees, or specified categories of the employees, of such employers or their subsidiaries or affiliates, or issued to a labor union, or to an association of employees formed for purposes other than obtaining such insurance, covering, with or without their dependents, the members, or specified categories of the members, of the labor union or association, or issued pursuant to RCW 48.21.030. Group disability insurance shall also include such other groups as qualify for group life insurance under the provisions of this code. [1949 c 190 § 27; 1947 c 79 § .21.01; Rem. Supp. 1949 § 45.21.01.]

48.21.020 "Employees," "employer" defined. The term "employees" as used in this chapter shall be deemed to include as employees of a single employer, the compensated officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. The term "employer" as used in this chapter shall be deemed to include any municipal corporation or governmental unit, agency or department thereof as well as private individuals, firms, corporations and other persons. [1947 c 79 § .21.02; Rem. Supp. 1947 § 45.21.02.]

48.21.030 Health care groups. A policy of group disability insurance may be issued to a corporation, as policyholder, existing primarily for the purpose of assisting individuals who are its subscribers in securing medical, hospital, dental, and other health care services for themselves and their dependents, covering all and not less than five hundred such subscribers and dependents, with respect only to medical, hospital, dental, and other health care services. [1947 c 79 § .21.03; Rem. Supp. 1947 § 45.21.03.]

48.21.040 "Blanket disability insurance" defined. (1) Any policy or contract of disability insurance which conforms with the description and complies with the requirements contained in one of the following six paragraphs shall be deemed a blanket disability insurance policy:

(a) A policy issued to any common carrier of passengers, which carrier shall be deemed the policyholder, covering a group defined as all persons who may become such passengers, and whereby such passengers shall be insured against loss or damage resulting from death or bodily injury either while, or as a result of, being such passengers.

(b) A policy issued in the name of any volunteer fire department, first aid or ambulance squad or volunteer

police organization, which shall be deemed the policyholder, and covering all the members of any such organization against loss from accidents resulting from hazards incidental to duties in connection with such organizations.

(c) A policy issued in the name of any established organization whether incorporated or not, having community recognition and operated for the welfare of the community and its members and not for profit, which shall be deemed the policyholder, and covering all volunteer workers who serve without pecuniary compensation and the members of the organization, against loss from accidents occurring while engaged in the actual performance of duties on behalf of such organization or in the activities thereof.

(d) A policy issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment, insuring such employees against death or bodily injury resulting while, or from, being exposed to such exceptional hazards.

(e) A policy covering students or employees issued to a college, school, or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder.

(f) A policy or contract issued to any other substantially similar group, which, in the commissioner's discretion, may be subject to the insurance of a blanket disability policy or contract.

(2) Nothing contained in this section shall be deemed to affect the liability of policyholders for the death of, or injury to, any such members of such group.

(3) Individual applications shall not be required from individuals covered under a blanket disability insurance contract. [1959 c 225 § 7; 1947 c 79 § .21.04; Rem. Supp. 1947 § 45.21.04.]

48.21.050 Standard provisions required. Every policy of group or blanket disability insurance shall contain in substance the provisions as set forth in RCW 48.21.060 to 48.21.090, inclusive, or provisions which in the opinion of the commissioner are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholder. No such policy of group or blanket disability insurance shall contain any provision relative to notice or proof of loss, or to the time for paying benefits, or to the time within which suit may be brought upon the policy, which in the opinion of the commissioner is less favorable to the individuals insured than would be permitted by the standard provisions required for individual disability insurance policies. [1947 c 79 § .21.05; Rem. Supp. 1947 § 45.21.05.]

48.21.060 The contract—Representations. There shall be a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued; that all statements made by the policyholder or by the individuals insured shall in the absence of fraud be deemed representations and not warranties, and that no statement made by any individual insured

shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such individual or to his beneficiary, if any. [1947 c 79 § .21.06; Rem. Supp. 1947 § 45.21.06.]

48.21.070 Payment of premiums. There shall be a provision that all premiums due under the policy shall be remitted by the employer or employers of the persons insured, by the policyholder, or by some other designated person acting on behalf of the association or group insured, to the insurer on or before the due date thereof with such period of grace as may be specified therein. [1947 c 79 § .21.07; Rem. Supp. 1947 § 45.21.07.]

48.21.080 Certificates of coverage. In group disability insurance policies there shall be a provision that the insurer shall issue to the employer, the policyholder, or other person or association in whose name such policy is issued, for delivery to each insured employee or member, a certificate setting forth in summary form a statement of the essential features of the insurance coverage, and to whom the benefits thereunder are payable described by name, relationship, or reference to the insurance records of the policyholder or insurer. If family members are insured, only one certificate need be issued for each family. This section shall not apply to blanket disability insurance policies. [1961 c 194 § 6; 1947 c 79 § .21.08; Rem. Supp. 1947 § 45.21.08.]

48.21.090 Age limitations. There shall be a provision specifying the ages, if any there be, to which the insurance provided therein shall be limited; and the ages, if any there be, for which additional restrictions are placed on benefits, and the additional restrictions placed on the benefits at such ages. [1947 c 79 § .21.09; Rem. Supp. 1947 § 45.21.09.]

48.21.100 Examination and autopsy. There may be a provision that the insurer shall have the right and opportunity to examine the person of the insured employee, member or dependent when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law. [1947 c 79 § .21.10; Rem. Supp. 1947 § 45.21.10.]

48.21.110 Payment of benefits. The benefits payable under any policy or contract of group or blanket disability insurance shall be payable to the employee or other insured member of the group or to the beneficiary designated by him, other than the policyholder, employer or the association or any officer thereof as such, subject to provisions of the policy in the event there is no designated beneficiary as to all or any part of any sum payable at the death of the individual insured.

The policy may provide that any hospital, medical, or surgical benefits thereunder may be made payable

jointly to the insured employee or member and the person furnishing such hospital, medical, or surgical services. [1955 c 303 § 17; 1947 c 79 § .21.11; Rem. Supp. 1947 § 45.21.11.]

48.21.120 Readjustment of premiums—Dividends. Any contract of group disability insurance may provide for the readjustment of the rate of premium based on the experience thereunder at the end of the first year or of any subsequent year of insurance thereunder, and such readjustment may be made retroactive only for such policy year. Any refund under any plan for readjustment of the rate of premium based on the experience under group policies heretofore or hereafter issued, and any dividend paid under such policies may be used to reduce the employer's share of the cost of the coverage, except that if the aggregate refunds or dividends under such group policy and any other group policy or contract issued to the policyholder exceed the aggregate contributions of the employer toward the cost of the coverages, such excess shall be applied by the policyholder for the sole benefit of insured employees. [1947 c 79 § .21.12; Rem. Supp. 1947 § 45.21.12.]

48.21.130 Benefits for services performed by licensed chiropodists. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract, benefits shall not be denied thereunder for any medical or surgical service performed by a holder of a license issued pursuant to chapter 18.22 RCW provided that (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW. [1963 c 87 § 2.]

Reviser's note: The above section applies to contracts issued on or after June 13, 1963, see note following RCW 48.20.390.

48.21.140 Benefits for services performed by licensed optometrists. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract, benefits shall not be denied thereunder for any eye care service rendered by a holder of a license issued pursuant to chapter 18.53 RCW, provided, that (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1965 c 149 § 3.]

Construction—1965 c 149: Nonapplicability to prior contracts and certain renewals, see note following RCW 48.20.410.

48.21.141 Benefits performed by registered nurses. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health service performed by a holder of a license issued pursuant to chapter 18.88 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to

chapter 18.71 RCW: *Provided, however,* That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1973 1st ex.s. c 188 § 4.]

Severability—1973 1st ex.s. c 188: See note following RCW 48.18.298.

48.21.142 Benefits for services performed by licensed chiropractors. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health service performed by a holder of a license issued pursuant to chapter 18.25 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: *Provided, however,* That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1971 ex.s. c 13 § 2.]

Severability—1971 ex.s. c 13: See RCW 48.31A.900.

48.21.144 Benefits for services performed by licensed psychologists. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract, benefits shall not be denied thereunder for any psychological service rendered by a holder of a license issued pursuant to chapter 18.83 RCW: *Provided,* That (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1971 ex.s. c 197 § 2.]

Application—1971 ex.s. c 197: See note following RCW 48.20.414.

48.21.146 Benefits for services performed by licensed dentists. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health service performed by a holder of a license issued pursuant to chapter 18.32 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: *Provided, however,* That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1974 1st ex.s. c 42 § 2.]

48.21.150 Coverage of dependent child not to terminate if child mentally or physically handicapped. Any group disability insurance contract or blanket disability insurance contract, providing health care services, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (2) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer by the employee or member within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer, but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1969 ex.s. c 128 § 4.]

48.21.155 Coverage of dependent children to include newborn infants and congenital anomalies from moment of birth. Any group disability insurance contract except blanket disability insurance contract, providing hospital and medical expenses and health care services, renewed, delivered or issued for delivery in this state more than one hundred twenty days after February 16, 1974, which provides coverage for the dependent children of persons in the insured group, shall provide coverage for newborn infant children of persons in the insured group from and after the moment of birth. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth. [1974 1st ex.s. c 139 § 2.]

48.21.160 Alcoholism treatment benefits—Legislative declaration. The legislature recognizes that alcoholism is a disease and, as such, warrants the same attention from the health care industry as other similarly serious diseases warrant; the legislature further recognizes that only very infrequently do health insurance contracts and contracts for health care services include provisions providing benefits for the treatment of alcoholism. In order to assist the many citizens of this state who suffer from the disease of alcoholism, and who are presently effectively precluded from obtaining any medical assistance under the terms of their health insurance contract or health care service contract, the legislature hereby declares that provisions providing benefits for the treatment of alcoholism shall be included in new contracts and that *this 1974 act is necessary for the protection of the public health and safety. [1974 1st ex.s. c 119 § 1.]

*Reviser's note: "this 1974 act" [1974 1st ex.s. c 119] consists of RCW 48.21.160, 48.21.170, 48.21.180, 48.21.190 and 48.44.240.

48.21.170 Alcoholism treatment benefits—Provisions of contracts issued or renewed July 1, 1974—January 1, 1975. Each group disability insurance contract which is issued, or renewed, on or after July 1, 1974 and before January 1, 1975 and which insures for hospital or medical care shall contain provisions providing benefits for the treatment of alcoholism rendered to the insured by alcoholism treatment facilities approved under RCW 70.96.092 and for the treatment of alcoholism rendered to the insured by an alcoholic treatment facility which is an "approved treatment facility" under RCW 70.96A.020(2). [1974 1st ex.s. c 119 § 2.]

48.21.180 Alcoholism treatment benefits—Provisions of contracts issued or renewed after January 1, 1975. Each group disability insurance contract which is issued, or renewed, on or after January 1, 1975 and which insures for hospital or medical care shall contain provisions providing benefits for the treatment of alcoholism rendered to the insured by an alcoholic treatment facility which is an "approved treatment facility" under RCW 70.96A.020(2). [1974 1st ex.s. c 119 § 3.]

48.21.190 Alcoholism treatment benefits—RCW 48.21.160—48.21.190, 48.44.240 inapplicable where contract provides for right of renewal without change. RCW 48.21.160 through 48.21.190 and 48.44.240 shall not apply to the renewal of a contract in force prior to the pertinent date provided for such contract under RCW 48.21.160 through 48.21.190 and 48.44.240 where there exists a right of renewal without any change in any provision of the contract. [1974 1st ex.s. c 119 § 5.]

Chapter 48.21A DISABILITY INSURANCE—EXTENDED HEALTH

Sections

- 48.21A.010 Declaration of purpose.
- 48.21A.020 Definitions.
- 48.21A.030 Insurers may join—Policyholder—Reduced benefit provision—Master group policy—Offering—Cancellation.
- 48.21A.040 Agents, brokers and solicitors.
- 48.21A.050 Powers and duties of associations.
- 48.21A.060 Commissioner's powers—Forms—Rates—Standard provisions—Withdrawal of approval—Federal, state benefits—Annual reports.
- 48.21A.070 Documents to be filed—Deceptive name or advertising.
- 48.21A.080 Remedies.

Refusal to renew or cancellation of disability insurance: RCW 48.18-298, 48.18.299.

48.21A.010 Declaration of purpose. It is the purpose of this chapter to provide a means of more adequately meeting the needs of persons who are sixty-five years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and experience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the

joint activities herein authorized in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), as amended. [1965 ex.s. c 70 § 27.]

Legislative direction—1965 ex.s. c 70: "There is added to chapter 79, Laws of 1947 and to Title 48 RCW a new chapter to read as set forth in sections 27 through 34, inclusive, of this 1965 amendatory act." [1965 ex.s. c 70 § 26.]

48.21A.020 Definitions. Wherever used in this chapter, the following terms shall have the meanings hereinafter set forth or indicated, unless the context otherwise requires:

(a) "Association" means a voluntary unincorporated association of insurers formed for the purpose of enabling cooperative action to provide disability insurance in accordance with this chapter in this or any other state having legislation enabling the issuance of insurance of the type provided in this chapter.

(b) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

(c) "Extended health insurance" means hospital, surgical and medical expense insurance provided by a policy issued as provided by this chapter. [1965 ex.s. c 70 § 28.]

48.21A.030 Insurers may join—Policyholder—Reduced benefit provision—Master group policy—Offering—Cancellation. Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers, to plan, develop, underwrite, and offer and provide to any person who is sixty-five years of age or older and to the spouse of such person, extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing and administering such insurance. The policyholder may be an association, a trustee, or any other person. Any such policy may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than one hundred percent of covered expenses which he is required to pay, and any insurer issuing individual policies providing extended hospital, surgical or medical benefits to persons sixty-five years of age and older and their spouses may also use such a policy provision. A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurances described in this section shall be another form of group disability insurance.

Any form of policy approved by the commissioner for an association shall be offered throughout Washington to all persons sixty-five and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancellable except for

nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled. [1965 ex.s. c 70 § 29.]

48.21A.040 Agents, brokers and solicitors. Notwithstanding the provisions of RCW 48.17.200, any person licensed to transact disability insurance as an agent, broker or solicitor may transact extended health insurance and may be paid a commission thereon. [1965 ex.s. c 70 § 30.]

48.21A.050 Powers and duties of associations. Any association formed for the purposes of this chapter may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of such association. Any such association may sue and be sued in its associate name and for such purpose only shall be treated as a domestic corporation. Service of process against such association, made upon a managing agent, any member thereof or any agent authorized by appointment to receive service of process, shall have the same force and effect as if such service had been made upon all members of the association. Such association's books and records shall also be subject to examination under the provisions of RCW 48.03.010 through 48.03.080, inclusive, either separately or concurrently with examination of any of its member insurers. [1965 ex.s. c 70 § 31.]

48.21A.060 Commissioner's powers—Forms—Rates—Standard provisions—Withdrawal of approval—Federal, state benefits—Annual reports. The forms of the policies, applications, certificates or other evidence of insurance coverage and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, or other evidence of insurance, application or other form shall be sold, issued or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner or thirty days shall have expired after such filing without written notice from the commissioner of disapproval thereof. The commissioner shall disapprove the forms of such insurance if he finds that they are unjust, unfair, inequitable, misleading or deceptive or that the rates are by reasonable assumption excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state including any differing operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred upon him by this chapter, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than ninety days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

If and when a program of hospital, surgical and medical benefits is enacted by the federal government or the state of Washington, the extended health insurance benefits provided by policies issued under this chapter shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

The association shall submit an annual report to the insurance commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under this chapter and the calendar year experience applicable to such insurance offered under this chapter, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report. [1965 ex.s. c 70 § 32.]

48.21A.070 Documents to be filed—Deceptive name or advertising. The articles of association of any association formed in accordance with this chapter, all amendments and supplements thereto, a designation in writing of a resident of this state as agent for the service of process, and a list of insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued, pursuant to this chapter shall not be such as to mislead or deceive the public. [1965 ex.s. c 70 § 33.]

48.21A.080 Remedies. No act done, action taken or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance. [1965 ex.s. c 70 § 34.]

Chapter 48.22 CASUALTY INSURANCE

Sections

- 48.22.020 Assigned risk plans.
48.22.030 Uninsured or hit-and-run motor vehicle coverage to be provided—Exceptions.

- 48.22.040 Uninsured motor vehicle coverage to include insured motor vehicle where liability insurer is insolvent—Extent of coverage—Rights of insurer upon making payment.

Casualty rates, rating organization: Chapter 48.19 RCW; RCW 48.19.440.

Injured public assistance recipient, department has lien, payment to recipient does not discharge lien: RCW 74.09.180-74.09.186.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

48.22.020 Assigned risk plans. The commissioner shall after consultation with the insurers licensed to write motor vehicle liability insurance in this state, approve a reasonable plan or plans for the equitable apportionment among such insurers of applicants for such insurance who are in good faith entitled to but are unable to procure insurance through ordinary methods and, when such plan has been approved, all such insurers shall subscribe thereto and shall participate therein. Any applicant for such insurance, any person insured under such plan and any insurer affected may appeal to the commissioner from any ruling or decision of the manager or committee designated to operate such plan. [1947 c 79 § .22.02; Rem. Supp. 1947 § 45.22.02.]

Rate modifications for assigned risks: RCW 48.19.400.

48.22.030 Uninsured or hit-and-run motor vehicle coverage to be provided—Exceptions. On and after January 1, 1968, no new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in RCW 46.29.490, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom, except that the named insured may be given the right to reject such coverage, and except that, unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer. [1967 c 150 § 27.]

48.22.040 Uninsured motor vehicle coverage to include insured motor vehicle where liability insurer is insolvent—Extent of coverage—Rights of insurer upon making payment. (1) The term "uninsured motor vehicles" with reference to coverage offered under any insurance policy regulated under this chapter shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency.

(2) An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period

in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein contained shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided hereunder.

(3) In the event of payment to an insured under the coverage required by this chapter and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such insured against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer. Whenever an insurer shall make payment under the coverage required by this section and which payment is occasioned by an insolvency, such insurer's right of recovery or reimbursement shall not include any rights against the insured of said insolvent insurer, but such paying insurer shall have the right to proceed directly against the insolvent insurer or its receiver, and in pursuance of such right such paying insurer shall possess any rights which the insured of the insolvent company might otherwise have had, if the insured of the insolvent insurer had personally made the payment. [1967 ex.s. c 95 § 3.]

Chapter 48.23

LIFE INSURANCE AND ANNUITIES

Sections

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- 48.23.160 Incontestability—Annuities, pure endowments.
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- 48.23.350 Standard nonforfeiture law—Life insurance.

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Assignment of policies: RCW 48.18.360.

Exemption of proceeds, commutation, annuities: RCW 48.18.430.

Exemption of proceeds, life insurance: RCW 48.18.410.

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Minor may contract for life or disability insurance: RCW 48.18.020.

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Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

Simultaneous deaths: RCW 48.18.390.

Spouses' rights in life insurance policy: RCW 48.18.440.

Standard valuation law: RCW 48.12.150.

Suicide or attempt as crime: Chapter 9.80 RCW.

48.23.010 Scope of chapter. The provisions of this chapter apply to contracts of life insurance and annuities other than group life insurance, group annuities, and, except for RCW 48.23.260, 48.23.270, 48.23.340, and 48.23.350, other than industrial life insurance. [1947 c 79 § .23.01; Rem. Supp. 1947 § 45.23.01.]

48.23.020 Standard provisions required—Life insurance. (1) No policy of life insurance other than industrial, group and pure endowments with or without return of premiums or of premiums and interest, shall be delivered or issued for delivery in this state unless it contains in substance all of the provisions required by RCW 48.23.030 to 48.23.130, inclusive. This provision shall not apply to annuity contracts.

(2) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein. [1947 c 79 § .23.02; Rem. Supp. 1947 § 45.23.02.]

48.23.030 Grace period. There shall be a provision that the insured is entitled to a grace period of one month, but not less than thirty days, within which the payment of any premium after the first may be made, subject at the option of the insurer to an interest charge not in excess of six percent per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in force, but in case the policy becomes a claim during the grace period before the overdue premium is paid, or the deferred premiums of the current policy year, if any, are paid, the amount of such premium or premiums with interest thereon may be deducted in any settlement under the policy. [1947 c 79 § .23.03; Rem. Supp. 1947 § 45.23.03.]

48.23.040 Entire contract—Representations. In all such policies other than those containing a clause making the policy incontestable from date of issue, there shall be a provision that the policy and the application therefor, if a copy thereof has been endorsed upon or attached to the policy at issue and made a part thereof, shall constitute the entire contract between the parties, and that all statements made by the applicant or by the insured, shall, in the absence of fraud, be deemed representations and not warranties. [1947 c 79 § .23.04; Rem. Supp. 1947 § 45.23.04.]

48.23.050 Incontestability. There shall be a provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years from its date of issue, except for nonpayment of premiums and except, at the option of the insurer, as to provisions relative to benefits in event of total and permanent disability and as to provisions which grant additional insurance specifically against accidental death. [1947 c 79 § .23.05; Rem. Supp. 1947 § 45.23.05.]

48.23.060 Misstatement of age. There shall be a provision that if it is found that the age of the insured (or the age of any other individual considered in determining the premium) has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age or ages, according to the insurer's rate at date of issue. [1947 c 79 § .23.06; Rem. Supp. 1947 § 45.23.06.]

48.23.070 Participation in surplus. (1) In all policies which provide for participation in the insurer's surplus, there shall be a provision that the policy shall so participate annually in the insurer's divisible surplus as apportioned by the insurer, beginning not later than the end of the third policy year. Any policy containing provision for annual participation beginning at the end of the first policy year, may also provide that each dividend shall be paid subject to the payment of the premiums for the next ensuing year. The insured under any annual dividend policy shall have the right each year to have the current dividend arising from such participation either paid in cash, or applied in accordance with such other dividend option as may be specified in the policy and elected by the insured. The policy shall further provide which of the options shall be effective if the insured shall fail to notify the insurer in writing of his election within the period of grace allowed for the payment of premium.

(2) This section shall not apply to paid-up nonforfeiture benefits nor paid-up policies issued on default in payment of premiums. [1947 c 79 § .23.07; Rem. Supp. 1947 § 45.23.07.]

48.23.080 Policy loan. (1) There shall be a provision that after three full years' premiums have been paid thereon, the insurer at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest not exceeding six percent per annum, or if payable in advance such interest shall not exceed the rate of five and seven-tenths percent, a sum to be determined as follows:

(a) If such policy is issued prior to the operative date of RCW 48.23.350, the sum, including any interest paid in advance but not beyond the end of the current policy year, shall be equal to or at the option of the owner of the policy less than, the reserve at the end of the current policy year on the policy and on any dividend additions thereto, less a sum not more than two and one-half percent of the amount insured by the policy and of any dividend additions thereto. The policy may contain a

provision by which the insurer reserves the right to defer the making of the loan, except when made to pay premiums, for a period not exceeding six months after the date of application therefor.

(b) If such policy is issued on or after such operative date, the sum, including any interest to the end of the current policy year shall not exceed the cash surrender value at the end of the current policy year, as required by RCW 48.23.350.

(2) Such policy shall further provide that the insurer may deduct from such loan value any existing indebtedness on the policy (unless such indebtedness has already been deducted in determining the cash surrender value) and any unpaid balance of the premium for the current policy year; and that if the loan is made or repaid on a date other than the anniversary of the policy, the insurer shall be entitled to interest for the portion of the current policy year at the rate of interest specified in the policy.

(3) Such policy may further provide that if the interest on the loan is not paid when due, it shall be added to the existing indebtedness and shall bear interest at the same rate; and that if and when the total indebtedness on the policy, including interest due or accruing, equals or exceeds the amount of the loan value thereof which would otherwise exist at such time, the policy shall terminate in full settlement of such indebtedness and become void; except, that it shall be stipulated in the policy that no such termination shall be effective prior to the expiration of at least thirty days after notice of the pendency of the termination was mailed by the insurer to the insured and the assignee, if any, at their respective addresses last of record with the insurer.

(4) The insurer shall provide in any policy issued on or after the operative date of RCW 48.23.350 that the making of any loan, other than a loan to pay premiums, may be deferred for not exceeding six months after the application for the loan has been received by it. [1947 c 79 § .23.08; Rem. Supp. 1947 § 45.23.08.]

48.23.090 Table of values and options. There shall be a table showing in figures the loan value, if any, and any options available under the policy each year upon default in premium payments, during at least the first twenty years of the policy, or for its life if maturity or expiry occurs in less than twenty years. [1947 c 79 § .23.09; Rem. Supp. 1947 § 45.23.09.]

48.23.100 Nonforfeiture options. There shall be a provision specifying the option to which the policyholder is automatically entitled in the absence of the election of other nonforfeiture options upon default in premium payment after nonforfeiture values become available. [1947 c 79 § .23.10; Rem. Supp. 1947 § 45.23.10.]

48.23.110 Table of installments. If the policy provides for payment of its proceeds in installments or as an annuity, a table showing the amount and period of such installments or annuity shall be included in the policy. Except, that if in the judgment of the commissioner it is not practical to include certain tables in the

policy, the requirements of this section may be met as to such policy by the insurer filing such tables with the commissioner. [1947 c 79 § .23.11; Rem. Supp. 1947 § 45.23.11.]

48.23.120 Reinstatement. There shall be a provision that the policy may be reinstated at any time within three years after the date of default in the payment of any premium, unless the policy has been surrendered for its cash value, or the period of any extended insurance provided by the policy has expired, upon evidence of insurability satisfactory to the insurer and the payment of all overdue premiums, and payment (or, within the limits permitted by the then cash values of the policy, reinstatement) of any other indebtedness to the insurer upon the policy with interest as to both premiums and indebtedness at a rate not exceeding six percent per annum compounded annually. [1947 c 79 § .23.12; Rem. Supp. 1947 § 45.23.12.]

48.23.130 Settlement on proof of death. There shall be a provision that when a policy becomes a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and surrender of the policy. [1947 c 79 § .23.13; Rem. Supp. 1947 § 45.23.13.]

48.23.140 Standard provisions—Annuities, pure endowment contracts. No annuity or pure endowment contract, other than reversionary annuities, or survivorship annuities, or group annuities, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in RCW 48.23.150 to 48.23.210 inclusive. Any of such provisions not applicable to single premium annuities or single premium pure endowment contracts shall not, to that extent, be incorporated therein.

This section shall not apply to contracts for deferred annuities included in, or upon the lives of beneficiaries under, life insurance policies. [1947 c 79 § .23.14; Rem. Supp. 1947 § 45.23.14.]

48.23.150 Grace period—Annuities, pure endowments. In such contracts, there shall be a provision that there shall be a period of grace of one month, but not less than thirty days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer, to an interest charge thereon at a rate to be specified in the contract but not exceeding six percent per annum for the number of days of grace elapsing before such payment, during which period of grace, the contract shall continue in full force; but in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer of the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement. [1947 c 79 § .23.15; Rem. Supp. 1947 § 45.23.15.]

48.23.160 Incontestability—Annuities, pure endowments. If any statements, other than those relating to age, sex, and identity, are required as a condition to issuing such an annuity or pure endowment contract, and subject to RCW 48.23.180, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of two years from its date of issue, except for nonpayment of stipulated payments to the insurer; and at the option of the insurer, such contract may also except any provisions relative to benefits in the event of total and permanent disability and any provisions which grant insurance specifically against death by accident. [1947 c 79 § .23.16; Rem. Supp. 1947 § 45.23.16.]

48.23.170 Entire contract—Annuities, pure endowments. In such contracts there shall be a provision that the contract shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties. [1947 c 79 § .23.17; Rem. Supp. 1947 § 45.23.17.]

48.23.180 Misstatement of age or sex—Annuities, pure endowments. In such contracts there shall be a provision that if the age or sex of the person or persons upon whose life or lives the contract is made, or if any of them has been misstated, the amount payable or benefit accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex; and that if the insurer shall make or has made any overpayment or overpayments on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding six percent per annum, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract. [1947 c 79 § .23.18; Rem. Supp. 1947 § 45.23.18.]

48.23.190 Dividends—Annuities, pure endowments. If such contract is participating, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract. [1947 c 79 § .23.19; Rem. Supp. 1947 § 45.23.19.]

48.23.200 Nonforfeiture benefits—Annuities, pure endowments. Such contracts issued after the operative date of RCW 48.23.360 shall contain:

(1) A provision that in the event of default in any stipulated payment, the insurer will grant a paid-up nonforfeiture benefit on a plan stipulated in the contract, effective as of such date, of such value as is hereinafter specified.

(2) A statement of the mortality table and interest rate used in calculating the paid-up nonforfeiture benefit available under the contract.

(3) An explanation of the manner in which the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the contract or any

indebtedness to the insurer on the contract. [1947 c 79 § .23.20; Rem. Supp. 1947 § 45.23.20.]

48.23.210 Reinstatement—Annuities, pure endowments. In such contracts there shall be a provision that the contract may be reinstated at any time within one year from the date of default in making stipulated payments to the insurer, unless the cash surrender value has been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated, with interest thereon at a rate to be specified in the contract but not exceeding six percent per annum payable annually, and in cases where applicable, the insurer may also include a requirement of evidence of insurability satisfactory to the insurer. [1947 c 79 § .23.21; Rem. Supp. 1947 § 45.23.21.]

48.23.220 Standard provisions—Reversionary annuities. No contract for a reversionary annuity shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in RCW 48.23.230 and 48.23.240. Any of such provisions not applicable to single premium annuities shall not, to that extent, be incorporated therein.

This section shall not apply to group annuities or to annuities included in life insurance policies. [1947 c 79 § .23.22; Rem. Supp. 1947 § 45.23.22.]

48.23.230 Sections applicable. Any such reversionary annuity contract shall contain the provisions specified in RCW 48.23.150 to 48.23.190, inclusive, except that under RCW 48.23.150 the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue or deferred payment in lieu of providing for a deduction of such payments from an amount payable upon a settlement under the contract. [1947 c 79 § .23.23; Rem. Supp. 1947 § 45.23.23.]

48.23.240 Reinstatement—Reversionary annuities. In such reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within three years from the date of default in making stipulated payments to the insurer, upon production of evidence of insurability satisfactory to the insurer, and upon condition that all overdue payments and any indebtedness to the insurer on account of the contract be paid, or, within the limits permitted by the then cash values of the contract, reinstated, with interest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding six percent per annum compounded annually. [1947 c 79 § .23.24; Rem. Supp. 1947 § 45.23.24.]

48.23.250 Supplemental benefits. The commissioner may make reasonable rules and regulations concerning the conditions in provisions granting additional benefits in event of the insured's accidental death, or in event the insured becomes totally and permanently disabled, which are a part of or supplemental to life insurance contracts. [1947 c 79 § .23.25; Rem. Supp. 1947 § 45.23.25.]

48.23.260 Limitation of liability. (1) The insurer may in any life insurance policy or annuity or pure endowment contract limit its liability to a determinable amount not less than the full reserve of the policy and of dividend additions thereto in event only of death occurring:

(a) As a result of war, or any act of war, declared or undeclared, or of service in the military, naval or air forces or in civilian forces auxiliary thereto, or from any cause while a member of any such military, naval or air forces of any country at war, declared or undeclared.

(b) As a result of suicide of the insured, whether sane or insane, within two years from date of issue of the policy.

(c) As a result of aviation under conditions specified in the policy.

(2) An insurer may specify conditions pertaining to the items of subsection (1) of this section which in the commissioner's opinion are more favorable to the policyholder. [1947 c 79 § .23.26; Rem. Supp. 1947 § 45.23.26.]

48.23.270 Incontestability after reinstatement. The reinstatement of any policy of life insurance or contract of annuity hereafter delivered or issued for delivery in this state may be contestable on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement as the policy provides with respect to contestability after original issuance. [1947 c 79 § .23.27; Rem. Supp. 1947 § 45.23.27.]

48.23.290 Premium deposits. (1) A life insurer may, under such policy provisions or agreements as have been approved by the commissioner consistent with this section, contract for and accept premium deposits in addition to the regular premiums specified in the policy, for the purpose of paying future premiums, or to facilitate conversion of the policy, or to increase the benefits thereof.

(2) The unused accumulation from such deposits shall be held and accounted for as a premium deposit fund, and the policy or agreement shall provide for the manner of application of the premium deposit fund to the payment of premiums otherwise in default and for the disposition of the fund if it is not sufficient to pay the next premium.

(3) Such fund shall:

(a) Be available upon surrender of the policy, in addition to the cash surrender value; and

(b) be payable upon the insured's death or upon maturity of the policy; and

(c) be paid to the insured whenever the cash surrender value together with the premium deposit fund equals or exceeds the amount of insurance provided by the policy, unless the amount of the deposit does not exceed that which may be required to facilitate conversion of the policy to another plan in accordance with its terms.

(4) No part of the premium deposit fund shall be paid to the insured during the continuance of the policy except at such times and in such amounts as is specified

in the policy or in the deposit agreement. [1947 c 79 § .23.29; Rem. Supp. 1947 § 45.23.29.]

48.23.300 Policy settlements. Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries, and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder. Upon maturity of a policy in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries. The insurer shall not be required to segregate funds so held but may hold them as part of its general assets. [1947 c 79 § .23.30; Rem. Supp. 1947 § 45.23.30.]

48.23.310 Deduction of indebtedness. In determining the amount due under any life insurance policy heretofore or hereafter issued, deduction may be made of

(1) any unpaid premiums or installments thereof for the current policy year due under the terms of the policy, and of

(2) the amount of principal and accrued interest of any policy loan or other indebtedness against the policy then remaining unpaid, such principal increased by unpaid interest and compounded as provided in this chapter. [1947 c 79 § .23.31; Rem. Supp. 1947 § 45.23.31.]

48.23.320 Miscellaneous proceeds. Upon the death of the insured and except as is otherwise expressly provided by the policy or premium deposit agreement, a life insurer may pay to the surviving spouse, children, beneficiary, or other person other than the insured's estate, appearing to the insurer to be equitably entitled thereto, sums held by it and comprising:

(1) Premiums paid in advance, and which premiums did not fall due prior to such death, or funds held on deposit for the payment of future premiums.

(2) Dividends theretofore declared on the policy and held by the insurer under the insured's option.

(3) Dividends becoming payable on or after the death of the insured. [1947 c 79 § .23.32; Rem. Supp. 1947 § 45.23.32.]

48.23.330 Trafficking in dividend rights. No life insurer nor any of its representatives, agents, or affiliates, shall buy, take by assignment other than in connection with policy loans, or otherwise deal or traffic in any rights to dividends existing under participating life insurance policies issued by the insurer. [1947 c 79 § .23.33; Rem. Supp. 1947 § 45.23.33.]

48.23.340 Prohibited policy plans. No life insurer shall hereafter issue for delivery or deliver in this state any life insurance policy:

(1) Issued under any plan for the segregation of policyholders into mathematical groups and providing benefits for a surviving policyholder of a group arising out

of the death of another policyholder of such group, or under any other similar plan.

(2) Providing benefits or values for surviving or continuing policyholders contingent upon the lapse or termination of the policies of other policyholders, whether by death or otherwise. [1947 c 79 § .23.34; Rem. Supp. 1947 § 45.23.34.]

48.23.350 Standard nonforfeiture law—Life insurance. (1) This section shall be known as the standard nonforfeiture law.

(2) Nonforfeiture provisions—Life: In the case of policies issued on or after the operative date of this section as defined in subsection (8), no policy of life insurance, except as stated in subsection (7), shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder:

(a) That, in the event of default in any premium payment, the insurer will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified.

(b) That, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default.

(d) That, if the policy shall have become paid-up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefits which become effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the insurer will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

(e) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy.

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of this state; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The insurer shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

(3) Cash surrender value—Life: Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection (2) of this section, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy including any existing paid-up additions, if there had been no default, over the sum of (a) the then present value of the adjusted premiums as defined in subsections (5), (5a) and (5b) of this section corresponding to premiums which would have fallen due on and after such anniversary, and (b) the amount of any indebtedness to the insurer on account of or secured by the policy. Any cash surrender value available within thirty days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefits whether or not required by such subsection (2), shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy including any existing paid-up additions, decreased by any indebtedness to the insurer on account of or secured by the policy.

(4) Paid-up nonforfeiture benefit—Life: Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(5) The adjusted premium—Life: Except as provided in the third paragraph of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (a) the then present value of the future guaranteed benefits provided for by the policy; (b) two percent of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (c) forty percent of the adjusted premium for the first policy year; (d) twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: *Provided*, That in applying the percentages specified in (c) and (d) above, no adjusted premium shall be deemed to exceed four percent of the amount of insurance or uniform amount equivalent thereto. Whenever the plan or term of a policy has been changed, either by request of the insured or automatically in accordance with the provisions of the policy, the date of inception of the changed policy for the purposes of determining a nonforfeiture benefit or cash surrender value shall be the date as of which the age of the insured is determined for the purpose of the changed policy.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy, provided, however, that in the case of a policy, providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in the first two paragraphs of this subsection except that, for the purposes of (b), (c) and (d) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) shall be equal to the excess of the

corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

Except as otherwise provided in subsections (5a) and (5b) of this section, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table: *Provided*, That for any category of ordinary insurance issued on female risks on or after July 1, 1957, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half percent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits: *Provided*, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred and thirty percent of the rates of mortality according to such applicable table: *Provided further*, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(5a) In the case of ordinary policies issued on or after the operative date of this subsection (5a) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest, not exceeding three and one-half percent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided, that such rate of interest shall not exceed three and one-half percent per annum except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after July 16, 1973, and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured. *Provided*, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table. *Provided*, further, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

On or after June 11, 1959, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection, either as to designated ordinary policies or as to all ordinary policies issued by it, after a specified date before January

1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection as to such policies for such insurer), this subsection shall become operative with respect to such policies thereafter issued by such insurer. If an insurer makes no such election, or so elects to have this subsection apply as to certain of its ordinary policies only, the operative date of this subsection as to all of the ordinary policies issued by such insurer (other than those policies as to which the insurer has elected an earlier operative date as hereinabove provided) shall be January 1, 1966.

(5b) In the case of industrial policies issued on or after the operative date of this subsection (5b) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest, not exceeding three and one-half percent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits: *Provided*, That such rate of interest shall not exceed three and one-half percent per annum except that a rate of interest not exceeding four percent per annum may be used for policies on or after July 16, 1973: *Provided*, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table: *Provided further*, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

After the effective date of this amendatory act of 1963, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such insurer), this subsection shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January 1, 1968.

(6) Calculation of values—Life: Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (3), (4), (5), (5a) and (5b) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (3) of this section, additional benefits payable (a) in the

event of death or dismemberment by accident or accidental means, (b) in the event of total and permanent disability, (c) as reversionary annuity or deferred reversionary annuity benefits, (d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, (e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid-up by reason of the death of a parent of the child, and (f) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(7) Exceptions: This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen years or less expiring before age sixty-six, for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsections (5), (5a) and (5b) of this section, is less than the adjusted premium so calculated, on such fifteen year term policy issued at the same age and for the same initial amount of insurance, nor to any policy which shall be delivered outside this state through an agent or other representative of the insurer issuing the policy.

(8) Operative date: After the effective date of this section, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before July 1, 1948. After the filing of such notice, then upon such specified date (which shall be the operative date for such insurer), this section shall become operative with respect to the policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be July 1, 1948. [1973 1st ex.s. c 162 § 5; 1963 c 195 § 20; 1961 c 194 § 7; 1959 c 225 § 8; 1957 c 193 § 15; 1947 c 79 § .23.35; Rem. Supp. 1947 § 45.23.35.]

Life insurance payable to trustee named as beneficiary in policy or will: RCW 48.18.450, 48.18.452.

48.23.360 Calculation of nonforfeiture benefits under annuities. (1) Nonforfeiture benefits: Any paid-up nonforfeiture benefit available under any annuity or pure endowment contract pursuant to RCW 48.23.200, in the event of default in a consideration due on any contract anniversary shall be such that its present value as of such anniversary shall be not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits (excluding any total disability benefits attached to such contracts) which would have been provided for by the contract including any existing paid-up additions, if there had been no default,

over the sum of (a) the then present value of the net consideration defined in subsection (2) of this section corresponding to considerations which would have fallen due on and after such anniversary, and (b) the amount of any indebtedness to the company on the contract, including interest due or accrued. In determining the benefits referred to in this section and in calculating the net consideration referred to in such subsection (2), in the case of annuity contracts under which an election may be made to have annuity payments commence at optional dates, the annuity payments shall be deemed to commence at the latest date permitted by the contract for the commencement of such payments and the considerations shall be deemed to be payable until such date, which, however, shall not be later than the contract anniversary nearest the annuitant's seventieth birthday.

(2) Net considerations: The net considerations for any annuity or pure endowment contract referred to in subsection (1) of this section shall be calculated on an annual basis, shall be such that the present value thereof at date of issue of the annuity shall equal the then present value of the future benefits thereunder (excluding any total disability benefits attached to such contracts) and shall be not less than the following percentages of the respective considerations specified in the contracts for the respective contract years:

| | |
|-----------------------------------|----------------|
| First year | fifty percent |
| Second and subsequent years | ninety percent |

Provided, That in the case of participating annuity contracts the percentages hereinbefore specified may be decreased by five.

(3) Basis of calculation: All net considerations and present values for such contracts referred to in this section shall be calculated on the basis of the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner, and the rate of interest, not exceeding three and one-half percent per annum, specified in the contract for calculating cash surrender values, if any, and paid-up nonforfeiture benefits; except that with respect to annuity and pure endowment contracts issued on or after the operative date of RCW 48.12.150(3)(b)(ii) for such contracts, such rate of interest may be as high as four percent per annum: *Provided*, That if such rate of interest exceeds three and one-half percent per annum, all net considerations and present values for such contracts referred to in this section shall be calculated on the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner.

(4) Calculations on default: Any cash surrender value and any paid-up nonforfeiture benefit, available under any such contract in the event of default in the payment of any consideration due at any time other than on the contract anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional considerations beyond the last preceding contract anniversary. All values herein referred to may be calculated

upon the assumption that any death benefit is payable at the end of the contract year of death.

(5) Deferment of payment: If an insurer provides for the payment of a cash surrender value, it shall reserve the right to defer the payment of such value for a period of six months after demand therefor with surrender of the contract.

(6) Lump sum in lieu: Notwithstanding the requirements of this section, any deferred annuity contract may provide that if the annuity allowed under any paid-up nonforfeiture benefit would be less than one hundred twenty dollars annually, the insurer may at its option grant a cash surrender value in lieu of such paid-up nonforfeiture benefit of such amount as may be required by subsection (3) of this section.

(7) Operative date: If no election is made by an insurer for an operative date prior to July 1, 1948, such date shall be the operative date for this section. [1973 1st ex.s. c 162 § 6; 1951 c 190 § 1; 1947 c 79 § .23.36; Rem. Supp. 1947 § 45.23.36.]

48.23.370 Duties of insurer issuing both participating and nonparticipating policies. (1) A life insurer issuing both participating and nonparticipating policies shall maintain records which segregate the participating from the nonparticipating business and clearly show the profits and losses upon each such category of business.

(2) For the purposes of such accounting the insurer shall make a reasonable allocation as between the respective such categories of the expenses of such general operations or functions as are jointly shared. Any allocation of expense as between the respective categories shall be made upon a reasonable basis, to the end that each category shall bear a just portion of joint expense involved in the administration of the business of such category.

(3) No policy hereafter delivered or issued for delivery in this state shall provide for, and no life insurer or representative shall hereafter knowingly offer or promise payment, credit or distribution of participating "dividends," "earnings," "profits," or "savings," by whatever name called, to participating policies out of such profits, earnings or savings on nonparticipating policies. [1965 ex.s. c 70 § 22.]

Chapter 48.24

GROUP LIFE AND ANNUITIES

Sections

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Group life insurance for officers, employees of banks, mutual savings banks, trust companies, or savings & loan associations; employer may pay part of premium: RCW 30.12.200.

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Payroll deduction of public employees for insurance and medical benefits authorized: RCW 41.04.020.

Payroll deductions and employees' contribution for group insurance on employees of second or third class cities or towns authorized: RCW 35.23.460.

Policy dividends are payable to real party in interest: RCW 48.18.340.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

48.24.010 Group requirements must be met. (1) No contract of life insurance shall hereafter be delivered or issued for delivery in this state insuring the lives of more than one individual unless to one of the groups as provided for in this chapter, and unless in compliance with the other provisions of this chapter.

(2) Subsection (1) of this section shall not apply to contracts of life insurance

(a) insuring only individuals related by marriage, by blood, or by legal adoption; or

(b) insuring only individuals having a common interest through ownership of a business enterprise, or of a substantial legal interest or equity therein, and who are actively engaged in the management thereof; or

(c) insuring the lives of employees and retirees under contracts executed with the state employees insurance board under the provisions of chapter 41.05 RCW. [1973 1st ex.s. c 147 § 11; 1947 c 79 § .24.01; Rem. Supp. 1947 § 45.24.01.]

48.24.020 Employee groups. The lives of a group of individuals may be insured under a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee is deemed the policyholder, insuring employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the

term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least ten employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. [1955 c 303 § 29; 1947 c 79 § .24.02; Rem. Supp. 1947 § 45.24.02.]

48.24.030 Dependents of employees or members of certain groups. (1) Insurance under any group life insurance policy issued pursuant to RCW 48.24.020, or 48.24.050, or 48.24.060, or 48.24.070 or 48.24.090 may, if seventy-five percent of the then insured employees or labor union members or public employee association members or members of the Washington state patrol elect, be extended to insure the spouse and minor children, or any class or classes thereof, of each such insured employee or member who so elects, in amounts in accordance with a plan which precludes individual selection by the employees or members or by the employer or labor union or trustee, and which insurance on the life of any one family member other than a spouse shall not be in excess of fifty percent of the insurance on the life of the insured employee or member or the amount shown in the schedule below, whichever is less:

| Age of family member at death | Maximum insurance |
|----------------------------------|-------------------|
| Under 6 months | \$ 100 |
| 6 months and under 2 years | \$ 200 |
| 2 years and under 3 years | \$ 400 |
| 3 years and under 4 years | \$ 600 |
| 4 years and under 5 years | \$ 800 |
| 5 years and over | \$ 1,000 |

Insurance on the life of a spouse of an insured employee or member shall not exceed one thousand dollars or the amount of insurance on the life of the insured employee or member, whichever is less.

Premiums for the insurance on such family members shall be paid by the policyholder, either from the employer's funds or funds contributed by him, trustee's funds, or labor union funds, and/or from funds contributed by the insured employees or members, or from both.

(2) Such a spouse insured pursuant to this section shall have the same conversion right as to the insurance on his or her life as is vested in the employee or member under this chapter. [1965 ex.s. c 70 § 23; 1963 c 192 § 1; 1953 c 197 § 10; 1947 c 79 § .24.03; Rem. Supp. 1947 § 45.24.03.]

48.24.035 Credit union groups. The lives of a group of individuals may be insured under a policy issued to a credit union, which shall be deemed the policyholder, to insure eligible members of such credit union for the benefit of persons other than the credit union or its officials, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of a credit union, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer, or all of any class or classes thereof determined by conditions pertaining to their age or membership in the credit union or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the credit union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued for which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance.

(3) The policy must cover at least twenty-five members at the date of issue.

(4) The amount of insurance under the policy shall not exceed the amount of the total shares and deposits of the member or two thousand dollars, whichever is less.

(5) As used herein, "credit union" means a credit union organized and operating under the federal credit union act of 1934 or chapter 31.12 RCW. [1961 c 194 § 8.]

48.24.040 Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditors, subject to the provisions of the insurance code relating to credit life insurance and credit accident and health insurance and to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness, except that nothing in this section shall preclude an insurer from excluding from the classes eligible for insurance classes of debtors determined by age. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more

affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent of the new entrants become insured.

(4) Payment by the debtor insured under any such group life insurance contract of the premium charged the creditor by the insurer for such insurance pertaining to the debtor, shall not be deemed to constitute a charge upon a loan in violation of any usury law. [1967 c 150 § 28; 1961 c 194 § 9; 1955 c 303 § 18; 1947 c 79 § .24.04; Rem. Supp. 1947 § 45.24.04.]

48.24.050 Labor union groups. The lives of a group of individuals may be insured under a policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued of which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which the premium is to be derived in part from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five percent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed

by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least twenty-five members at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. [1955 c 303 § 19; 1947 c 79 § .24.05; Rem. Supp. 1947 § 45.24.05.]

48.24.060 Public employee associations (as amended by 1973 1st ex.s. c 152 § 5). The lives of a group of public employees may be insured under a policy issued to the departmental head or to a trustee, or issued to an association of public employees formed for purposes other than obtaining insurance and having, when the policy is placed in force, a membership in the classes eligible for insurance of not less than seventy-five percent of the number of employees eligible for membership in such classes, which department head or trustee or association shall be deemed the policyholder, to insure such employees for the benefit of persons other than the policyholder or any of its officials, subject to the following requirements:

(1) The persons eligible for insurance under the policy shall be all of the employees of the department or members of the association, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the association, or both.

(2) The premium for the policy shall be paid by the policyholder, in whole or in part either from salary deductions authorized by, or charges collected from, the insured employees or members specifically for the insurance, or from the association's own funds, or from both. Any such deductions from salary may be paid by the employer to the association or directly to the insurer. No policy may be placed in force unless and until at least seventy-five percent of the then eligible employees or association members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered and have authorized their employer to make any required deductions from salary.

(3) The rate of charges to the insured employees or members specifically for the insurance, and the dues of the association if they include the cost of insurance, shall be determined according to each attained age or in not less than four reasonably spaced attained age groups. In no event shall the rate of such dues or charges be level for all members regardless of attained age.

(4) The policy must cover at least twenty-five persons at date of issue.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or members or by the association.

As used herein, "public employees" means employees of the United States government, or of any state, or of any political subdivision or instrumentality of any of them. [1973 1st ex.s. c 152 § 5; 1963 c 195 § 21; 1955 c 303 § 20; 1953 c 197 § 11; 1947 c 79 § .24.06; Rem. Supp. 1947 § 45.24.06.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

Reviser's note: RCW 48.24.060 was amended twice during the 1973 first extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same legislative session, see RCW 1.12.025.

48.24.060 Public employee associations (as amended by 1973 1st ex.s. c 163 § 8). The lives of a group of public employees may be insured under a policy issued to the departmental head or to a trustee, or issued to an association of public employees formed for purposes other than obtaining insurance and having, when the policy is placed in force, a membership in the classes eligible for insurance of not less than seventy-five percent of the number of employees eligible for membership in such classes, which department head or trustee or association shall be deemed the policyholder, to insure such employees for the benefit of persons other than the policyholder or any of its officials, subject to the following requirements:

(1) The persons eligible for insurance under the policy shall be all of the employees of the department or members of the association, or

all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the association, or both.

(2) The premium for the policy shall be paid by the policyholder, in whole or in part either from salary deductions authorized by, or charges collected from, the insured employees or members specifically for the insurance, or from the association's own funds, or from both. Any such deductions from salary may be paid by the employer to the association or directly to the insurer. No policy may be placed in force unless and until at least seventy-five percent of the then eligible employees or association members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered and have authorized their employer to make any required deductions from salary.

(3) The rate of charges to the insured employees or members specifically for the insurance, and the dues of the association if they include the cost of insurance, shall be determined according to each attained age or in not less than four reasonably spaced attained age groups. In no event shall the rate of such dues or charges be level for all members regardless of attained age.

(4) The policy must cover at least twenty-five persons at date of issue.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or members or by the association. Such amounts shall in no event exceed fifteen thousand dollars of life insurance in the case of any employee or member, and the amount of life insurance shall not exceed one thousand five hundred dollars in the case of retired employees or members and persons over age sixty-five.

As used herein, "public employees" means employees of the United States government, or of any state, or of any political subdivision or instrumentality of any of them. [1973 1st ex.s. c 163 § 8; 1963 c 195 § 21; 1955 c 303 § 20; 1953 c 197 § 11; 1947 c 79 § .24.06; Rem. Supp. 1947 § 45.24.06.]

Reviser's note: RCW 48.24.060 was amended twice during the 1973 first extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same legislative session, see RCW 1.12.025.

48.24.070 Trustee groups. The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two or more employers or by two or more employer members of an employers' association, or by one or more labor unions, or by one or more employers and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees or members for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) If the policy is issued to two or more employer members of an employers' association, such policy may be issued only if (a) the association has been in existence for at least five years and was formed for purposes other than obtaining insurance and (b) the participating employers, meaning such employer members whose employees are to be insured, constitute at date of issue at least fifty percent of the total employers eligible to participate, unless the number of persons covered at date of issue exceeds six hundred, in which event such participating employers must constitute at least twenty-five percent of such total employers in either case omitting from consideration any employer whose employees are already covered for group life insurance.

(2) The persons eligible for insurance shall be all of the employees of the employers or all of the members of

the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees.

(3) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or, partly from such funds and partly from funds contributed by the insured persons. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five percent of the then eligible persons, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(4) The policy must cover at least fifty persons at date of issue.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. [1973 1st ex.s. c 163 § 9; 1963 c 86 § 1; 1959 c 225 § 9; 1955 c 303 § 21; 1953 c 197 § 12; 1947 c 79 § .24.07; Rem. Supp. 1947 § 45.24.07.]

48.24.080 Agent groups. The lives of a group of individuals may be insured under a policy issued to a principal, or if such principal is a life insurer, by or to such principal, covering when issued not less than twenty-five agents of such principal, subject to the following requirements:

(1) The agents eligible for insurance under the policy shall be those who are under contract to render personal services for such principal for a commission or other fixed or ascertainable compensation.

(2) The policy must insure either all of the agents or all of any class or classes thereof, determined by conditions pertaining to the services to be rendered by such agents, except that if a policy is intended to insure several such classes it may be issued to insure any such class of which seventy-five percent are covered and extended to other classes as seventy-five percent thereof express the desire to be covered.

(3) The premium on the policy shall be paid by the principal or by the principal and the agents jointly. When the premium is paid by the principal and agents jointly and the benefits of the policy are offered to all eligible agents, the policy, when issued, must insure not less than seventy-five percent of such agents.

(4) The amounts of insurance shall be based upon some plan which will preclude individual selection.

(5) The insurance shall be for the benefit of persons other than the principal.

(6) Such policy shall terminate if, subsequent to issue, the number of agents insured falls below twenty-five lives or seventy-five percent of the number eligible and the contribution of the agents, if the premiums are on a renewable term insurance basis, exceed one dollar per month per one thousand dollars of insurance coverage plus any additional premium per one thousand dollars of insurance coverage charged to cover one or more hazardous occupations.

(7) For the purposes of this section "agents" shall be deemed to include agents, subagents, solicitors, and salesmen. [1949 c 190 § 33; Rem. Supp. 1949 § 45.24.08.]

48.24.090 Washington state patrol. The lives of a group of individuals may be insured under a policy issued to the commanding officer, which commanding officer shall be deemed the policyholder, to insure not less than twenty-five of the members of the Washington state patrol. Such policy shall be for the benefit of beneficiaries as designated by the individuals so insured, and the premium thereon may be paid by such members. Not less than seventy-five percent of all eligible members of such Washington state patrol, or of any unit thereof determined by conditions pertaining to their employment, may be so insured. [1947 c 79 § .24.09; Rem. Supp. 1947 § 45.24.09.]

48.24.095 Financial institutions. The lives of a group of individuals may be insured under a policy issued to a state or federally regulated financial institution, which financial institution shall be deemed the policyholder. The purpose of the policy shall be to insure the depositors or depositor members of the financial institution for the benefit of persons other than the financial institution or its officers. The issuance of the policy shall be subject to the following requirements:

(1) The persons eligible for insurance under the policy shall be the depositors or deposit members of such financial institution, except any as to whom evidence of individual insurability is not satisfactory to the insurer, or any class or classes thereof determined by conditions of age.

(2) The policy must cover at least one hundred persons at the date of issue.

(3) The amount of insurance under the policy shall not exceed the amount of the deposit account of the insured person or five thousand dollars whichever is less.

(4) Financial institutions referred to herein must be authorized to do business in the state of Washington and have their depositors' or members' deposit accounts insured against loss to the amount of at least fifteen thousand dollars by a corporate agency of the federal government. [1967 ex.s. c 95 § 15.]

48.24.100 Standard provisions. No policy of group life insurance shall be delivered or issued for delivery in this state unless it contains in substance the standard

provisions as required by RCW 48.24.110 to 48.24.200, inclusive, or provisions which in the opinion of the commissioner are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholder; except that:

(1) Provisions set forth in RCW 48.24.160 to 48.24.200, inclusive, shall not apply to policies issued to a creditor to insure its debtors.

(2) If the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but such nonforfeiture benefits are not required to be the same as those required for individual life insurance policies. [1947 c 79 § .24.10; Rem. Supp. 1947 § 45.24.10.]

48.24.110 Grace period. There shall be a provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period. [1947 c 79 § .24.11; Rem. Supp. 1947 § 45.24.11.]

48.24.120 Incontestability. There shall be a provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by an individual insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such individual's lifetime nor unless it is contained in a written instrument signed by him. [1947 c 79 § 24.12; Rem. Supp. 1947 § 45.24.12.]

48.24.130 The contract—Representations. There shall be a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued and become a part of the contract; that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary. [1947 c 79 § .24.13; Rem. Supp. 1947 § 45.24.13.]

48.24.140 Insurability. There shall be a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage. [1947 c 79 § .24.14; Rem. Supp. 1947 § 45.24.14.]

48.24.150 Misstatement of age. There shall be a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used. [1947 c 79 § .24.15; Rem. Supp. 1947 § 45.24.15.]

48.24.160 Beneficiary—Funeral, last illness expenses. There shall be a provision that any sum becoming due by reason of the death of the individual insured shall be payable to the beneficiary designated by such individual, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the individual insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding five hundred dollars to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the individual insured. [1955 c 303 § 23; 1947 c 79 § .24.16; Rem. Supp. 1947 § 45.24.16.]

48.24.170 Certificates. There shall be a provision that the insurer will issue to the policyholder for delivery to each individual insured a certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, described by name, relationship, or reference to the insurance records of the policyholder or insurer, and the rights and conditions set forth in RCW 48.24.180, 48.24.190 and 48.24.200, following. [1961 c 194 § 10; 1947 c 79 § .24.17; Rem. Supp. 1947 § 45.24.17.]

48.24.180 Conversion on termination of eligibility. There shall be a provision that if the insurance, or any portion of it, on an individual covered under the policy, other than a child insured pursuant to RCW 48.24.030, ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such individual shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that,

(1) the individual policy shall, at the option of such individual, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(2) the individual policy shall be in an amount not in any event in excess of the amount of life insurance which ceases because of such termination nor less than one thousand dollars unless a smaller amount of coverage was provided for such individual under the group policy: *Provided*, That any amount of insurance which matures on the date of such termination or has matured prior thereto under the group policy as an endowment payable to the individual insured, whether in one sum or in installments or in the form of an annuity, shall

not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(3) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such individual then belongs, and to his age attained on the effective date of the individual policy. [1955 c 303 § 24; 1947 c 79 § .24.18; Rem. Supp. 1947 § 45.24.18.]

48.24.190 Conversion on termination of policy. There shall be a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured individuals, every individual insured thereunder at the date of such termination, other than a child insured pursuant to RCW 48.24.030, whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by RCW 48.24.180, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (a) the amount of the individual's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days of such termination and (b) two thousand dollars. [1953 c 197 § 13; 1947 c 79 § .24.19; Rem. Supp. 1947 § 45.24.19.]

48.24.200 Death pending conversion. There shall be a provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with RCW 48.24.180 and 48.24.190, and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made. [1947 c 79 § .24.20; Rem. Supp. 1947 § 45.24.20.]

48.24.210 Limitation of liability. (1) The insurer may in any group life insurance contract provide that it is not liable, or is liable only in a reduced amount, for losses resulting:

(a) From war or any act of war, declared or undeclared, or of service in the military, naval or air forces or in civilian forces auxiliary thereto, or from any cause while a member of any such military, naval or air forces, of any country at war, declared or undeclared.

(b) From aviation under conditions specified in the policy.

(2) The insurer may in any such contract provide that any amount of insurance in excess of one thousand dollars on an individual life may be reduced to one

thousand dollars or to any greater amount upon attainment of any age not less than age sixty-five or upon the anniversary of the policy nearest attainment of such age. [1947 c 79 § .24.21; Rem. Supp. 1947 § 45.24.21.]

48.24.240 Readjustment of premium. Any group life insurance contract may provide for a readjustment of the premium rate based on experience under that contract, at the end of the first or of any subsequent year of insurance, and which readjustment may be made retroactive for such policy year only. [1947 c 79 § .24.24; Rem. Supp. 1947 § 45.24.24.]

48.24.260 Application of dividends or rate reductions. Any policy dividends hereafter declared, or reduction in rate of premiums hereafter made or continued for the first or any subsequent year of insurance, under any policy of group life insurance heretofore or hereafter issued to any policyholder may be applied to reduce the policyholder's part of the cost of such insurance, except that if the aggregate dividends or refunds or credits under such group policy and any other group policy or contract issued to the policyholder exceed the aggregate contributions of the policyholder toward the cost of the coverages, such excess shall be applied by the policyholder for the sole benefit of insured individuals. [1947 c 79 § .24.26; Rem. Supp. 1947 § 45.24.26.]

Chapter 48.25 INDUSTRIAL LIFE INSURANCE

Sections

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Exemption of proceeds, life insurance: RCW 48.18.410.

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Minor may contract for life or disability insurance: RCW 48.18.020.

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Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

48.25.010 Scope of chapter. The provisions of this chapter apply only to industrial life insurance contracts. [1947 c 79 § .25.01; Rem. Supp. 1947 § 45.25.01.]

48.25.020 Industrial life insurance defined. "Industrial" life insurance is any life insurance provided by an individual insurance contract issued in face amount of less than one thousand dollars, under which premiums are payable monthly or oftener, and bearing the words "industrial policy" printed upon the policy as a part of the descriptive matter. [1947 c 79 § .25.02; Rem. Supp. 1947 § 45.25.02.]

48.25.030 Compliance enjoined. No policy of industrial life insurance shall be delivered or be issued for delivery in this state after January 1, 1948, except in compliance with the provisions of this chapter and with other applicable provisions of this code. [1947 c 79 § .25.03; Rem. Supp. 1947 § 45.25.03.]

48.25.040 Standard provisions. No such policy shall be so issued or delivered unless it contains in substance the provisions as required by this chapter, or provisions which in the opinion of the commissioner are more favorable to the policyholder. [1947 c 79 § .25.04; Rem. Supp. 1947 § 45.25.04.]

48.25.050 Grace period. There shall be a provision that the insured is entitled to a grace period of four weeks within which the payment of any premium after the first may be made, except that in policies the premiums for which are payable monthly, the period of grace shall be one month but not less than thirty days; and that during the period of grace the policy shall continue in full force, but if during the grace period the policy becomes a claim, then any overdue and unpaid premiums may be deducted from any settlement under the policy. [1947 c 79 § .25.05; Rem. Supp. 1947 § 45.25.05.]

48.25.060 Entire contract. There shall be a provision that the policy shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the policy when issued, a provision that the policy and the application therefor shall constitute the entire contract. If the application is so made a part of the contract, the policy shall also provide that all statements made by the applicant in such application shall, in the absence of fraud, be deemed to be representations and not warranties. [1947 c 79 § .25.06; Rem. Supp. 1947 § 45.25.06.]

48.25.070 Incontestability. There shall be a provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years from its date of issue except for nonpayment of premiums, and except, at the option of the insurer, as to supplemental provisions providing benefits for total and permanent disability or specifically for accidental death. [1947 c 79 § .25.07; Rem. Supp. 1947 § 45.25.07.]

48.25.080 Misstatement of age. There shall be a provision that if it is found that the age of the individual insured, or the age of any other individual considered in determining the premium, has been misstated, any amount payable or benefit accruing under the policy

shall be such as the premium would have purchased at the correct age or ages. [1947 c 79 § .25.08; Rem. Supp. 1947 § 45.25.08.]

48.25.090 Dividends. If a participating policy, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the policy, and that dividends arising from such apportionment shall be credited annually beginning not later than the fifth contract year. This provision shall not prohibit the payment of additional dividends on default of payment of premiums or termination of the policy. [1947 c 79 § .25.09; Rem. Supp. 1947 § 45.25.09.]

48.25.100 Nonforfeiture benefits. There shall be a provision for nonforfeiture benefits as required by RCW 48.23.350. [1947 c 79 § .25.10; Rem. Supp. 1947 § 45.25.10.]

48.25.110 Cash surrender value. There shall be a provision for a cash surrender value as required by RCW 48.23.350. [1947 c 79 § .25.11; Rem. Supp. 1947 § 45.25.11.]

48.25.120 Reinstatement. There shall be a provision that the policy may be reinstated at any time within two years from the due date of the premium in default unless the cash surrender value has been paid, or the extension period expired, upon the production of evidence of insurability satisfactory to the insurer and the payment of all overdue premiums and payment or reinstatement of any unpaid loans or advances made by the insurer against the policy with interest at a rate not exceeding six percent per annum and payable annually. [1947 c 79 § .25.12; Rem. Supp. 1947 § 45.25.12.]

48.25.130 Settlement. There shall be a provision that when the policy becomes a claim by the death of the insured, settlement shall be made upon receipt of due proof of death or after a specified period not exceeding two months after receipt of such proof. [1947 c 79 § .25.13; Rem. Supp. 1947 § 45.25.13.]

48.25.140 Authority to alter policy. There shall be a provision that no agent shall have the power or authority to waive, change or alter any of the terms or conditions of any policy; except that, at the option of the insurer, the terms or conditions may be changed by an endorsement signed by a duly authorized officer of the insurer. [1947 c 79 § .25.14; Rem. Supp. 1947 § 45.25.14.]

48.25.150 Beneficiary. (1) Each such policy shall have a space on the front or back page of the policy for the name of the beneficiary designated with a reservation of the right to designate or change the beneficiary after the issuance of the policy.

(2) The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer, and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to

have an insurable interest in the life of the insured. [1947 c 79 § .25.15; Rem. Supp. 1947 § 45.25.15.]

48.25.160 Facility of payment clause. Such a policy may also provide that if the beneficiary designated in the policy does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than thirty days after the death of the insured, or if the beneficiary is the estate of the insured or is a minor, or dies before the insured or is not legally competent to give a valid release, then the insurer may make payment thereunder to the executor or administrator of the insured, or to any of the insured's relatives by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary, or by reason of having incurred expense for the maintenance, medical attention or burial of the insured. Such policy may also include a similar provision applicable to any other payment due under the policy. [1947 c 79 § .25.16; Rem. Supp. 1947 § 45.25.16.]

48.25.170 Payment of premiums direct. In the case of weekly premium policies, there may be a provision that upon proper notice to the insurer while premiums on the policy are not in default beyond the grace period, of the intention to pay future premiums directly to the insurer at its home office or any office designated by the insurer for the purpose, the insurer will, at the end of each period of a year from the due date of the first premium so paid, for which period such premiums are so paid continuously without default beyond the grace period, refund a stated percentage of the premiums in an amount which fairly represents the savings in collection expense. [1947 c 79 § .25.17; Rem. Supp. 1947 § 45.25.17.]

48.25.180 Conversion—Weekly premium policies. There shall be a provision in the case of weekly premium policies granting, upon proper written request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting his weekly premium industrial insurance to any form of life insurance with less frequent premium payments regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversion need be granted only if the insurer's weekly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of such insurance with less frequent premium payments issued by the insurer at the age of the insured on the plan of industrial or ordinary insurance desired. [1947 c 79 § .25.18; Rem. Supp. 1947 § 45.25.18.]

48.25.190 Conversion—Monthly premium policies. There shall be a provision, in the case of monthly premium industrial policies, granting, upon proper written

request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting his monthly premium industrial insurance to any form of ordinary life insurance regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversions need be granted only if the insurer's monthly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of ordinary insurance issued by the insurer at the age of the insured on the plan of ordinary insurance desired. [1947 c 79 § .25.19; Rem. Supp. 1947 § 45.25.19.]

48.25.200 Title to be stated on face of policy. There shall be a title on the face of each such policy briefly describing its form. [1947 c 79 § .25.20; Rem. Supp. 1947 § 45.25.20.]

48.25.210 Application to term and specified insurance. Any of the provisions required by this chapter or any portion thereof which are not applicable to single premium or term policies or to policies issued or granted pursuant to nonforfeiture provisions, shall to that extent not be incorporated therein. [1947 c 79 § .25.21; Rem. Supp. 1947 § 45.25.21.]

48.25.220 Prohibited provisions. No such policy shall contain:

(1) A provision by which the insurer may deny liability under the policy for the reason that the insured has previously obtained other insurance from the same insurer.

(2) A provision giving the insurer the right to declare the policy void because the insured has had any disease or ailment, whether specified or not, or because the insured has received institutional, hospital, medical or surgical treatment or attention, except a provision which gives the insurer the right to declare the policy void if the insured has, within two years prior to the issuance of the policy, received institutional, hospital, medical or surgical treatment or attention and if the insured or claimant under the policy fails to show that the condition occasioning such treatment or attention was not of a serious nature or was not material to the risk.

(3) A provision giving the insurer the right to declare the policy void because the insured had been rejected for insurance, unless such right be conditioned upon a showing by the insurer, that knowledge of such rejection would have led to a refusal by the insurer to make such contract. [1947 c 79 § .25.22; Rem. Supp. 1947 § 45.25.22.]

48.25.230 Limitation of liability. The insurer may in any such policy limit its liability for the same causes and to the same extent as is provided in RCW 48.23.260 for other life insurance contracts. [1947 c 79 § .25.23; Rem. Supp. 1947 § 45.25.23.]

Chapter 48.25A LIFE INSURANCE—PROFIT-SHARING, CHARTER, FOUNDERS, AND COUPON POLICIES

Sections

- 48.25A.010 Definitions.
 48.25A.020 Certain policies not to be issued or delivered after September 1, 1967.
 48.25A.030 Coupon policies—Approval by commissioner.
 48.25A.040 Coupon policies—Requirements.
 48.25A.050 Revocation of certificates of authority and licenses for violation of chapter.

48.25A.010 Definitions. As used in this chapter:

(1) "Profit-sharing policy" means:

(a) A life insurance policy which by its terms expressly provides that the policyholder will participate in the distribution of earnings or surplus other than earnings or surplus attributable, by reasonable and nondiscriminatory standards, to the participating policies of the company and allocated to the policyholder on reasonable and nondiscriminatory standards; or

(b) A life insurance policy the provisions of which, through sales material or oral presentations, are interpreted by the company to prospective policyholders as entitling the policyholder to the benefits described in subsection (a) of this section.

(2) "Charter policy" or "founders policy" means:

(a) A life insurance policy which by its terms expressly provides that the policyholder will receive some preferential or discriminatory advantage or benefit not available to persons who purchase insurance from the company at future dates or under other circumstances; or

(b) A life insurance policy the provisions of which, through sales material or oral presentations, are interpreted by the company to prospective policyholders as entitling the policyholder to the benefits described in subsection (a) of this section.

(3) "Coupon policy" means a life insurance policy which provides a series of pure endowments maturing periodically in amounts not exceeding the gross annual policy premiums. The term "pure endowment" or "endowment" is used in its accepted actuarial sense, meaning a benefit becoming payable at a specific future date if the insured person is then living. [1967 ex.s. c 95 § 5.]

48.25A.020 Certain policies not to be issued or delivered after September 1, 1967. No profit-sharing, charter, or founders policy shall be issued or delivered in this state after September 1, 1967. [1967 ex.s. c 95 § 6.]

48.25A.030 Coupon policies—Approval by commissioner. No coupon policy shall be issued or delivered in this state until the form of the same has been filed with and approved by the commissioner. [1967 ex.s. c 95 § 7.]

48.25A.040 Coupon policies—Requirements. Coupon policies issued or delivered in this state shall be subject to the following provisions:

(1) No detachable coupons or certificates or pass-books may be used. No other device may be used which

tends to emphasize the periodic endowment benefits or which tends to create the impression that the endowments represent interest earnings or anything other than benefits which have been purchased by part of the policyholder's premium payments.

(2) Each endowment benefit must have a fixed maturity date and payment of the endowment benefit shall not be contingent upon the payment of any premium becoming due on or after such maturity date.

(3) The endowment benefits must be expressed in dollar amounts rather than as percentages of other quantities or in other ways, both in the policy itself and in the sale thereof.

(4) A separate premium for the periodic endowment benefits must be shown in the policy adjacent to the rest of the policy premium information and must be given the same emphasis in the policy and in the sale thereof as that given the rest of the policy premium information. This premium shall be calculated with mortality, interest and expense factors which are consistent with those for the basic policy premium. [1967 ex.s. c 95 § 8.]

48.25A.050 Revocation of certificates of authority and licenses for violation of chapter. The commissioner may revoke all certificates of authority and licenses granted to any insurance company, its officers or agents violating any provision of this chapter. [1967 ex.s. c 95 § 9.]

Chapter 48.26

MARINE AND TRANSPORTATION INSURANCE (RESERVED)

Chapter 48.27

PROPERTY INSURANCE

Sections

- 48.27.010 Over-insurance prohibited.
48.27.020 Replacement insurance.

Binders: RCW 48.18.230.

Insurable interest, property insurance: RCW 48.18.040.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

Rates: Chapter 48.19 RCW.

Standard form of fire policy: RCW 48.18.120.

48.27.010 Over-insurance prohibited. (1) Over-insurance shall be deemed to exist if property or an insurable interest therein is insured by one or more insurance contracts against the same hazard in any amount in excess of the fair value of the property or of such interest, as determined as of the effective date of the insurance or of any renewal thereof.

(2) For the purposes of this section only the term "fair value" means the cost of replacement less such depreciation as is properly applicable to the subject insured.

(3) No person shall knowingly issue, place, procure, or accept any insurance contract which would result in over-insurance of the property or interest therein proposed to be insured, except as is provided in RCW 48.27.020.

(4) Each violation of this section shall subject the violator to the penalties provided by this code. [1947 c 79 § .27.01; Rem. Supp. 1947 § 45.27.01.]

48.27.020 Replacement insurance. By any contract of insurance of property or of any insurable interest therein, the insurer may in connection with a special provision or endorsement made a part of the policy insure the cost of repair or replacement of such property, if damaged or destroyed by a hazard insured against, and without deduction of depreciation, subject to such reasonable rules and regulations as may be made by the commissioner. [1951 c 194 § 1; 1947 c 79 § .27.02; formerly Rem. Supp. 1947 § 45.27.02.]

Chapter 48.28 SURETY INSURANCE

Sections

- 48.28.010 Requirements deemed met by surety insurer.
48.28.020 Fiduciary bonds—Premium as lawful expense.
48.28.030 Judicial bonds—Premium as part of recoverable costs.
48.28.040 Official bonds—Payment of premiums.
48.28.050 Release from liability.

Binders: RCW 48.18.230.

Bonds for notaries public: RCW 42.28.030.

Official bonds in general: Chapter 42.08 RCW.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

48.28.010 Requirements deemed met by surety insurer. Whenever by law or by rule of any court, public official, or public body, any surety bond, recognizance, obligation, stipulation or undertaking is required or is permitted to be given, any such bond, recognizance, obligation, stipulation, or undertaking which is otherwise proper and the conditions of which are guaranteed by an authorized surety insurer, or by an unauthorized surety insurer as a surplus line pursuant to chapter 48.15 RCW of this code, shall be approved and accepted and shall be deemed to fulfill all requirements as to number of sureties, residence or status of sureties, and other similar requirements, and no justification by such surety shall be necessary. [1947 c 79 § .28.01; Rem. Supp. 1947 § 45.28.01.]

48.28.020 Fiduciary bonds—Premium as lawful expense. Any fiduciary required by law to give bonds, may include as part of his lawful expense to be allowed by the court or official by whom he was appointed, the reasonable amount paid as premium for such bonds to the authorized surety insurer or to the surplus line surety insurer which issued or guaranteed such bonds. [1955 c 30 § 1. Prior: 1947 c 79 § .28.02; Rem. Supp. 1947 § 45.28.02.]

48.28.030 Judicial bonds—Premium as part of recoverable costs. In any proceeding the party entitled to recover costs may include therein such reasonable sum as was paid to such surety insurer as premium for any bond or undertaking required therein, and as may be allowed by the court having jurisdiction of such proceeding. [1955 c 30 § 2. Prior: 1947 c 79 § .28.03; Rem. Supp. 1947 § 45.28.03.]

48.28.040 Official bonds—Payment of premiums. The premium for bonds given by such surety insurers for appointive or elective public officers and for such of their deputies or employees as are required to give bond shall be paid by the state, political subdivision, or public body so served. [1955 c 30 § 3. Prior: 1947 c 79 § .28.04; Rem. Supp. 1947 § 45.28.04.]

48.28.050 Release from liability. A surety insurer may be released from its liability on the same terms and conditions as are provided by law for the release of individuals as sureties. [1947 c 79 § .28.05; Rem. Supp. 1947 § 45.28.05.]

| More than | County population but not more than | Amount of guaranty fund deposit required |
|-----------|-------------------------------------|--|
| 0 | 15,000 | \$ 10,000.00 |
| 15,000 | 35,000 | \$ 15,000.00 |
| 35,000 | 60,000 | \$ 25,000.00 |
| 60,000 | 100,000 | \$ 50,000.00 |
| 100,000 | 150,000 | \$ 75,000.00 |
| 150,000 | 300,000 | \$100,000.00 |
| 300,000 | 500,000 | \$150,000.00 |
| 500,000 | | \$200,000.00 |

(2) For authority to transact business in two or more counties, the insurer must have a guaranty fund deposit in amount not less than the amount required under subsection (1) as to that one of the counties in which business is to be so transacted for which the largest amount is so required. [1957 c 193 § 16; 1947 c 79 § .29.03; Rem. Supp. 1947 § 45.29.03.]

48.29.040 May do business in two or more counties. Subject to the deposit requirements of RCW 48.29.030, a title insurer having its principal offices in one county may be authorized to transact business in only such additional counties as to which it owns and maintains, or has a duly authorized agent that owns and maintains, a complete set of tract indexes. [1957 c 193 § 17; 1947 c 79 § .29.04; Rem. Supp. 1947 § 45.29.04.]

48.29.060 Impairment of deposit. If an insurer's guaranty fund deposit becomes impaired for any cause, the commissioner shall forthwith give notice thereof to the insurer, requiring that the impairment be cured within thirty days after the date of the notice. If the impairment is not so cured, the commissioner shall forthwith revoke the insurer's certificate of authority. [1947 c 79 § .29.06; Rem. Supp. 1947 § 45.29.06.]

48.29.070 Levy of execution against deposit. If an insurer fails to satisfy any judgment against it arising out of its liability under any title insurance policy or certificate of title issued, insured, or assumed by it, within thirty days after the finality of the judgment became fixed, the judgment may be enforced against the insurer's guaranty fund deposit through the following procedure:

(1) The judgment creditor shall petition the court wherein the judgment is entered and as part of the same cause, truthfully setting forth the facts regarding the insurer's failure to satisfy the judgment as required by this section.

(2) Upon such petition the court shall direct issuance of a special execution directed to the sheriff of Thurston county, requiring that the sheriff sell so much of the securities on deposit as may be required to satisfy the judgment and pay the costs of the levy.

(3) The court's order for issuance of the special execution shall also direct that a copy of the judgment and of the petition be served upon the commissioner within five days after the date of the order.

Chapter 48.29 TITLE INSURERS

Sections

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| 48.29.010 | Scope of chapter. |
| 48.29.020 | Qualifications—Guaranty fund deposit. |
| 48.29.030 | Amount of deposit. |
| 48.29.040 | May do business in two or more counties. |
| 48.29.060 | Impairment of deposit. |
| 48.29.070 | Levy of execution against deposit. |
| 48.29.090 | Purpose of deposit. |
| 48.29.100 | Termination of deposit. |
| 48.29.110 | Release of securities. |
| 48.29.120 | Special reserve fund. |
| 48.29.130 | Investments. |
| 48.29.140 | Premium rates. |
| 48.29.150 | Taxation of title insurers. |

48.29.010 Scope of chapter. (1) This chapter relates only to title insurers.

(2) None of the provisions of this code shall be deemed to apply to persons engaged in the business of preparing and issuing abstracts of title to property and certifying to the correctness thereof so long as such persons do not guarantee or insure such titles. [1947 c 79 § .29.01; Rem. Supp. 1947 § 45.29.01.]

48.29.020 Qualifications—Guaranty fund deposit. A title insurer shall not be entitled to have a certificate of authority unless it otherwise qualifies therefor, nor unless:

(1) It is a stock corporation.

(2) It owns and maintains a complete set of tract indexes of the county in which its principal office within this state is located.

(3) It deposits and keeps on deposit with the commissioner a guaranty fund in amount as set forth in RCW 48.29.030 and comprised of cash or public obligations as specified in RCW 48.13.040. [1955 c 86 § 12; 1947 c 79 § .29.02; Rem. Supp. 1947 § 45.29.02.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.29.030 Amount of deposit. (1) The amount of the required guaranty fund deposit shall be determined by the population, as at last official United States or official state census, of the county within which the insurer is to be authorized to transact its business, as follows:

(4) Upon issuance of such special execution and upon such service upon the commissioner, the commissioner shall deliver to such sheriff sufficient of such securities as may be required for sale to satisfy the judgment and to pay such costs. [1955 c 86 § 14; 1947 c 79 § .29.07; Rem. Supp. 1947 § 45.29.07.]

48.29.090 Purpose of deposit. (1) The securities comprising the guaranty fund deposit shall be held by the commissioner as a special guaranty fund securing the faithful performance by the insurer of all its undertakings and liabilities as to any title guaranteed or insured by it.

(2) Such deposit shall not be subject to any other liabilities of the insurer until after all its liabilities named in subsection (1) of this section have been discharged. [1955 c 86 § 16; 1947 c 79 § .29.09; Rem. Supp. 1947 § 45.29.09.]

48.29.100 Termination of deposit. (1) A guaranty fund deposit shall be terminated only upon the existence of any of the following conditions:

(a) Upon termination of all liabilities of the insurer, other than through reinsurance, under all guaranties or insurances of titles made, issued, or assumed by it.

(b) Upon reinsurance of all such liabilities of the insurer, with the commissioner's approval, in another insurer holding a certificate of authority as a title insurer in this state.

(2) For the purposes of this section only, all liability of the insurer with regard to a title guaranteed or insured by it shall be deemed terminated upon the expiration of twenty-one years from the date of the guaranty or insurance, unless prior thereto a claim of loss has been made with reference thereto and settlement of such loss then remains pending. [1947 c 79 § .29.10; Rem. Supp. 1947 § 45.29.10.]

48.29.110 Release of securities. (1) Upon any termination of the guaranty fund deposit, the commissioner shall release the securities comprising it to the insurer after the following conditions have been complied with:

(a) The insurer shall make written application for such release, verified by the oaths of its president and secretary.

(b) The commissioner shall in due course following upon such application make such examination of the records of the insurer, and of the insurer's officers under oath, as he deems reasonably necessary to determine that the conditions for termination of the deposit have been met.

(2) Upon release of the securities, the commissioner shall revoke the insurer's certificate of authority. [1955 c 86 § 17; 1947 c 79 § .29.11; Rem. Supp. 1947 § 45.29.11.]

48.29.120 Special reserve fund. (1) Each title insurer shall annually apportion to a special reserve fund an amount determined by applying the rate of twenty-five cents for each one thousand dollars of net increase of insurance it has in force as at the end of such year. Such apportionment shall be continued or resumed as

needed to maintain the special reserve fund at an amount equal to not less than the guaranty fund deposit required of the insurer.

(2) The special reserve fund shall be held by the insurer as an additional guaranty fund, and shall be used only for the payment of losses after the insurer's liquid resources available for the payment of losses, other than such special reserve fund or the guaranty fund deposit, have been exhausted.

(3) For the purposes of computing the special reserve fund as provided in subsection (1) of this section, net increase of insurance in force resulting from reinsurance of the risks of another title insurer shall not be included to the extent that a like special reserve fund on such insurance is maintained by the ceding insurer. [1947 c 79 § .29.12; Rem. Supp. 1947 § 45.29.12.]

48.29.130 Investments. The funds of a domestic title insurer, other than those representing its guaranty fund deposit, shall be invested as follows:

(1) Funds in amount not less than its required special reserve shall be kept invested in investments eligible for domestic life insurers.

(2) Other funds may be invested in:

(a) The insurer's plant and equipment, up to a maximum of fifty percent of capital plus surplus.

(b) Stocks and bonds of abstract companies when approved by the commissioner.

(c) Investments eligible for the investment of funds of any domestic insurer. [1967 c 150 § 30; 1947 c 79 § .29.13; Rem. Supp. 1947 § 45.29.13.]

48.29.140 Premium rates. (1) Premium rates for the insuring or guaranteeing of titles shall not be excessive, inadequate, or unfairly discriminatory.

(2) Each title insurer shall forthwith file with the commissioner a schedule showing the premium rates to be charged by it. Every addition to or modification of such schedule or of any rate therein contained shall likewise be filed with the commissioner, and no such addition or modification shall be effective until expiration of fifteen days after date of such filing.

(3) The commissioner may order the modification of any premium rate or schedule of premium rates found by him after a hearing to be excessive, or inadequate, or unfairly discriminatory. No such order shall require retroactive modification. [1947 c 79 § .29.14; Rem. Supp. 1947 § 45.29.14.]

48.29.150 Taxation of title insurers. Title insurers and their property shall be taxed by this state in accordance with the general laws relating to taxation, and not otherwise. [1947 c 79 § .29.15; Rem. Supp. 1947 § 45.29.15.]

Chapter 48.30

UNFAIR PRACTICES AND FRAUDS

Sections

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| 48.30.010 | Unfair practices in general. |
| 48.30.020 | Anticompact law. |
| 48.30.030 | False financial statements. |
| 48.30.040 | False information and advertising. |

- 48.30.050 Advertising must show name and domicile.
- 48.30.060 Insurer name—Deceptive use prohibited.
- 48.30.070 Advertising of financial condition.
- 48.30.080 Defamation of insurer.
- 48.30.090 Misrepresentation of policies.
- 48.30.100 Dividends not to be guaranteed.
- 48.30.110 Political contributions.
- 48.30.120 Misconduct of officers, employees.
- 48.30.130 Presumption of knowledge of director.
- 48.30.140 Rebating.
- 48.30.150 Illegal inducements.
- 48.30.155 Life or disability insurers—Insurance as inducement to purchase of goods, etc.
- 48.30.160 Rebating—License revocation.
- 48.30.170 Rebate—Acceptance prohibited.
- 48.30.180 "Twisting" prohibited.
- 48.30.190 Illegal dealing in premiums.
- 48.30.200 Hypothecation of premium notes.
- 48.30.210 Misrepresentation in application for insurance.
- 48.30.220 Wilful destruction, injury, secretion, etc., of property.
- 48.30.230 False claims or proof.
- 48.30.240 Rate wars prohibited.
- 48.30.250 Interlocking ownership, management.
- 48.30.260 Right of debtor or borrower to select agent, broker, insurer.
- 48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning.
- 48.30.280 Cancellation or failure to renew based upon sex or marital status deemed unfair practice.
- 48.30.290 Cancellation or failure to renew based upon sex or marital status deemed unfair practice—Rules and regulations—Enforcement.

Discrimination prohibited: RCW 48.18.480.

Fraudulent destruction of insured property: RCW 9.91.090.

48.30.010 Unfair practices in general. (1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.04 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by him to be unfair or deceptive.

(3) No such regulation shall be made effective prior to the expiration of thirty days after the date of the order by which it is promulgated.

(4) If the commissioner has cause to believe that any person is violating any such regulation he may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person direct or mail it to the person by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him, he may be fined by the commissioner a sum not to exceed two hundred and fifty dollars for each violation committed thereafter, or the commissioner may take such other action independently, or in addition, as is permitted under the insurance code for the violation of the regulation. [1973 1st ex.s. c 152 § 6; 1965 ex.s. c 70 § 24; 1947 c 79 § .30.01; Rem. Supp. 1947 § 45.30.01.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.30.020 Anticompact law. (1) No person shall either within or outside of this state enter into any contract, understanding or combination with any other person to do jointly or severally any act or engage in any practice for the purpose of

(a) controlling the rates to be charged for insuring any risk or any class of risks in this state; or

(b) unfairly discriminating against any person in this state by reason of his plan or method of transacting insurance, or by reason of his affiliation or nonaffiliation with any insurance organization; or

(c) establishing or perpetuating any condition in this state detrimental to free competition in the business of insurance or injurious to the insuring public.

(2) This section shall not apply relative to ocean marine and foreign trade insurances.

(3) This section shall not be deemed to prohibit the doing of things permitted to be done in accordance with the provisions of chapter 48.19 RCW of this code.

(4) Whenever the commissioner has knowledge of any violation of this section he shall forthwith order the offending person to discontinue such practice immediately or show cause to the satisfaction of the commissioner why such order should not be complied with. If the offender is an insurer or a licensee under this code and fails to comply with such order within thirty days after receipt thereof, the commissioner may forthwith revoke the offender's certificate of authority or licenses. [1947 c 79 § .30.02; Rem. Supp. 1947 § 45.30.02.]

48.30.030 False financial statements. No person shall knowingly file with any public official nor knowingly make, publish, or disseminate any financial statement of an insurer which does not accurately state the insurer's financial condition. [1947 c 79 § .30.03; Rem. Supp. 1947 § 45.30.03.]

48.30.040 False information and advertising. No person shall knowingly make, publish, or disseminate any false, deceptive or misleading representation or advertising in the conduct of the business of insurance, or relative to the business of insurance or relative to any person engaged therein. [1947 c 79 § .30.04; Rem. Supp. 1947 § 45.30.04.]

48.30.050 Advertising must show name and domicile. Every advertisement of, by, or on behalf of an insurer shall set forth the name in full of the insurer and the location of its home office or principal office, if any, in the United States (if an alien insurer). [1947 c 79 § .30.05; Rem. Supp. 1947 § 45.30.05.]

48.30.060 Insurer name—Deceptive use prohibited. No person who is not an insurer shall assume or use any name which deceptively infers or suggests that it is an insurer. [1947 c 79 § .30.06; Rem. Supp. 1947 § 45.30.06.]

48.30.070 Advertising of financial condition. (1) Every advertisement by or on behalf of any insurer purporting to show its financial condition may be in a condensed form but shall in substance correspond with the insurer's last verified statement filed with the commissioner.

(2) No insurer or person in its behalf shall advertise assets except those actually owned and possessed by the insurer in its own exclusive right, available for the payment of losses and claims, and held for the protection of its policyholders and creditors. [1947 c 79 § .30.07; Rem. Supp. 1947 § 45.30.07.]

48.30.080 Defamation of insurer. No person shall make, publish, or disseminate, or aid, abet or encourage the making, publishing, or dissemination of any information or statement which is false or maliciously critical and which is designed to injure in its reputation or business any authorized insurer or any domestic corporation or reciprocal being formed pursuant to this code for the purpose of becoming an insurer. [1947 c 79 § .30.08; Rem. Supp. 1947 § 45.30.08.]

48.30.090 Misrepresentation of policies. No person shall make, issue or circulate, or cause to be made, issued or circulated any misrepresentation of the terms of any policy or the benefits or advantages promised thereby, or the dividends or share of surplus to be received thereon, or use any name or title of any policy or class of policies misrepresenting the nature thereof. [1947 c 79 § .30.09; Rem. Supp. 1947 § 45.30.09.]

48.30.100 Dividends not to be guaranteed. No insurer, agent, broker, solicitor, or other person, shall guarantee or agree to the payment of future dividends or future refunds of unused premiums or savings in any specific or approximate amounts or percentages on account of any insurance contract. [1947 c 79 § .30.10; Rem. Supp. 1947 § 45.30.10.]

48.30.110 Political contributions. (1) No insurer or fraternal benefit society doing business in this state shall directly or indirectly pay or use, or offer, consent or agree to pay or use any money or thing of value for or in aid of any political party; nor for or in aid of any candidate for political office, nor for the nomination for such office; nor for reimbursement or indemnification of any person for money or property so used.

(2) Any individual who violates any provision of this section, or who participates in, aids, abets, advises, or consents to any such violation, or who solicits or knowingly receives any money or thing of value in violation of this section, shall be guilty of a gross misdemeanor and shall be liable to the insurer or society for the amount so contributed or received. [1947 c 79 § .30.11; Rem. Supp. 1947 § 45.30.11.]

48.30.120 Misconduct of officers, employees. No director, officer, agent, attorney in fact, or employee of an insurer shall:

(1) Knowingly receive or possess himself of any of its property, otherwise than in payment for a just demand,

and with intent to defraud, omit to make or to cause or direct to be made, a full and true entry thereof in its books and accounts; nor

(2) Make or concur in making any false entry, or concur in omitting to make any material entry, in its books or accounts; nor

(3) Knowingly concur in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein; nor

(4) Having the custody or control of its books, willfully fail to make any proper entry in the books of the insurer as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by any person entitled by law to inspect the same, or take extracts therefrom; nor

(5) If a notice of an application for an injunction or other legal process affecting or involving the property or business of the insurer is served upon him, fail to disclose the fact of such service and the time and place of such application to the other directors, officers, and managers thereof; nor

(6) Fail to make any report or statement lawfully required by a public officer. [1947 c 79 § .30.12; Rem. Supp. 1947 § 45.30.12.]

48.30.130 Presumption of knowledge of director. A director of an insurer is deemed to have such knowledge of its affairs as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of any provision of this chapter. If present at a meeting of directors at which any act, proceeding, or omission of its directors which is a violation of any such provision occurs, he must be deemed to have concurred therein unless at the time he causes or in writing requires his dissent therefrom to be entered on the minutes of the directors.

If absent from such meeting, he must be deemed to have concurred in any such violation if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the insurer for six months thereafter without causing or in writing requiring his dissent from such violation to be entered upon such record or minutes. [1947 c 79 § .30.13; Rem. Supp. 1947 § 45.30.13.]

48.30.140 Rebating. (1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, general agent, agent, broker, or solicitor shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed agent, general agent,

broker, or solicitor for insurance placed on his own property or risks, if the aggregate of such commissions does not exceed five percent of the total net commissions received by the agent, general agent, broker, or solicitor during the same twelve month period.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance agent, general agent, broker, or solicitor, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the agent's or broker's commission. [1947 c 79 § .30.14; Rem. Supp. 1947 § 45.30.14.]

48.30.150 Illegal inducements. No insurer, general agent, agent, broker, solicitor, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to the insured or prospective insured or to any other person on his behalf in any manner whatsoever:

(1) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(2) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(3) Any prizes, goods, wares, or merchandise of an aggregate value in excess of one dollar.

This section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing. [1957 c 193 § 18; 1947 c 79 § .30.15; Rem. Supp. 1947 § 45.30.15.]

48.30.155 Life or disability insurers—Insurance as inducement to purchase of goods, etc. No life or disability insurer shall directly or indirectly participate in any plan to offer or effect any kind or kinds of insurance in this state as an inducement to the purchase by the public of any goods, securities, commodities, services or subscriptions to publications. This section shall not apply to group or blanket insurance issued pursuant to this code. [1957 c 193 § 19.]

48.30.160 Rebating—License revocation. The commissioner shall revoke the certificates of authority or licenses of any insurer, general agent, agent, broker, or solicitor guilty of violating any provision contained in RCW 48.30.140 and 48.30.150. No such insurer, general agent, agent, broker, or solicitor shall, following any such revocation, be eligible for a certificate of authority or license within one year after such revocation. [1947 c 79 § .30.16; Rem. Supp. 1947 § 45.30.16]

48.30.170 Rebate—Acceptance prohibited. (1) No insured person shall receive or accept, directly or indirectly, any rebate of premium or part thereof, or any

favor, advantage, share in dividends, or other benefits, or any valuable consideration or inducement not specified or provided for in the policy, or any commission on any insurance policy to which he is not lawfully entitled as a licensed agent, broker, or solicitor. The retention by the nominal policyholder in any group life insurance contract of any part of any dividend or reduction of premium thereon contrary to the provisions of RCW 48.24.260, shall be deemed the acceptance and receipt of a rebate and shall be punishable as provided by this code.

(2) The amount of insurance whereon the insured has so received or accepted any such rebate or any such commission, other than as to life or disability insurances, shall be reduced in the proportion that the amount or value of the rebate or commission bears to the premium for such insurance. In addition to such reduction of insurance, if any, any such insured shall be liable to a fine of not more than two hundred dollars. [1947 c 79 § .30.17; Rem. Supp. 1947 § 45.30.17.]

48.30.180 "Twisting" prohibited. No person shall by misrepresentations or by misleading comparisons, induce or tend to induce any insured to lapse, terminate, forfeit, surrender, retain, or convert any insurance policy. [1947 c 79 § .30.18; Rem. Supp. 1947 § 45.30.18.]

48.30.190 Illegal dealing in premiums. (1) No person shall wilfully collect any sum as premium for insurance, which insurance is not then provided or is not in due course to be provided by an insurance policy issued by an insurer as authorized by this code.

(2) No person shall wilfully collect as premium for insurance any sum in excess of the amount actually expended or in due course is to be expended for insurance applicable to the subject on account of which the premium was collected.

(3) No person shall wilfully or knowingly fail to return to the person entitled thereto within a reasonable length of time any sum collected as premium for insurance in excess of the amount actually expended for insurance applicable to the subject on account of which the premium was collected.

(4) Each violation of this section which does not amount to a felony shall constitute a misdemeanor. [1947 c 79 § .30.19; Rem. Supp. 1947 § 45.30.19.]

48.30.200 Hypothecation of premium notes. It shall be unlawful for any insurer or its representative, or any agent or broker, to hypothecate, sell, or dispose of any promissory note, received in payment for any premium or part thereof on any contract of life insurance or of disability insurance applied for, prior to delivery of the policy to the applicant. [1947 c 79 § .30.20; Rem. Supp. 1947 § 45.30.20.]

48.30.210 Misrepresentation in application for insurance. Any agent, solicitor, broker, examining physician or other person who makes a false or fraudulent statement or representation in or relative to an application for insurance in an insurer transacting insurance under

the provisions of this code, shall be guilty of a misdemeanor, and the license of any such agent, solicitor, or broker so guilty shall be revoked. [1947 c 79 § .30.21; Rem. Supp. 1947 § 45.30.21.]

48.30.220 Wilful destruction, injury, secretion, etc., of property. Any person, who, with intent to defraud or prejudice the insurer thereof, wilfully burns or in any manner injures, destroys, secretes, abandons, or disposes of any property which is insured at the time against loss or damage by fire, theft, or embezzlement, or by any other casualty, whether the same be the property of or in the possession of such person or any other person, under such circumstances not making the offense arson, is guilty of a felony. [1965 ex.s. c 70 § 25; 1947 c 79 § .30.22; Rem. Supp. 1947 § 45.30.22.]

48.30.230 False claims or proof. Any person, who, knowing it to be such:

(1) Presents, or causes to be presented, a false or fraudulent claim, or any proof in support of such a claim, for the payment of a loss under a contract of insurance; or

(2) Prepares, makes, or subscribes any false or fraudulent account, certificate, affidavit, or proof of loss, or other document or writing, with intent that it be presented or used in support of such a claim, is guilty of a gross misdemeanor. [1947 c 79 § .30.23; Rem. Supp. 1947 § 45.30.23.]

48.30.240 Rate wars prohibited. (1) Any insurer which precipitates, or aids in precipitating or conducting a rate war and by so doing writes or issues a policy of insurance at a less rate than permitted under its schedules filed with the commissioner, or below the rate deemed by him to be proper and adequate to cover the class of risk insured, shall have its certificate of authority to do business in this state suspended until such time as the commissioner is satisfied that it is charging a proper rate of premium.

(2) Any insurer which has precipitated, or aided in precipitating or conducting a rate war for the purpose of punishing or eliminating competitors or stifling competition, or demoralizing the business, or for any other purpose, and has ordered the cancellation or rewriting of policies at a rate lower than that provided by its rating schedules where such rate war is not in operation, and has paid or attempted to pay to the insured any return premiums, on any risk so to be rewritten, on which its agent has received or is entitled to receive his regular commission, such insurer shall not be allowed to charge back to such agent any portion of his commission on the ground that the same has not been earned. [1947 c 79 § .30.24; Rem. Supp. 1947 § 45.30.24.]

48.30.250 Interlocking ownership, management. (1) Any insurer may retain, invest in or acquire the whole or any part of the capital stock of any other insurer or insurers, or have a common management with any other insurer or insurers, unless such retention, investment, acquisition or common management is inconsistent

with any other provision of this title, or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business or tends to create a monopoly therein.

(2) Any person otherwise qualified may be a director of two or more insurers which are competitors, unless the effect thereof is to substantially lessen competition between insurers generally or tends to create a monopoly.

(3) If the commissioner finds, after a hearing thereon, that there is violation of this section he shall order all such persons and insurers to cease and desist from such violation within such time, or extension thereof, as may be specified in such order. [1949 c 190 § 34; Rem. Supp. 1949 § 45.30.25.]

48.30.260 Right of debtor or borrower to select agent, broker, insurer. Every debtor or borrower, when property insurance of any kind is required in connection with the debt or loan, shall have reasonable opportunity and choice in the selection of the agent, broker, and insurer through whom such insurance is to be placed; but only if the insurance is properly provided for the protection of the creditor or lender not later than at commencement of risk as to such property as respects such creditor or lender, and in the case of renewal of insurance, only if the renewal policy is delivered to the creditor or lender not later than thirty days prior to the renewal date. [1957 c 193 § 20.]

48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning. (1) No officer or employee of this state, or of any public agency, public authority or public corporation except a public corporation or public authority created pursuant to agreement or compact with another state, and no person acting or purporting to act on behalf of such officer or employee, or public agency or public authority or public corporation, shall, with respect to any public building or construction contract which is about to be, or which has been competitively bid, require the bidder to make application to, or to furnish financial data to, or to obtain or procure, any of the surety bonds or contracts of insurance specified in connection with such contract, or specified by any law, general, special or local, from a particular insurer or agent or broker.

(2) No such officer or employee or any person, acting or purporting to act on behalf of such officer or employee shall negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance, except contracts of insurance for builder's risk or owner's protective liability, which can be obtained or procured by the bidder, contractor or subcontractor.

(3) This section shall not be construed to prevent the exercise by such officer or employee on behalf of the state or such public agency, public authority, or public corporation of its right to approve the form, sufficiency or manner or execution of the surety bonds or contracts of insurance furnished by the insurer selected by the

bidder to underwrite such bonds, or contracts of insurance.

(4) Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are declared to be contrary to the public policy of this state.

(5) A violation of this section shall be subject to the penalties provided by RCW 48.01.080. [1967 ex.s. c 12 § 3.]

48.30.280 Cancellation or failure to renew based upon sex or marital status deemed unfair practice. It shall be an unfair practice for an insurer to cancel or to refuse to renew the automobile insurance of any person when the basis of such a cancellation is the inclusion of such a person into a statistical category based solely on the sex and/or marital status of such a person. [1971 ex.s. c 174 § 1.]

Unfair practices with respect to insurance transactions: RCW 49.60.178.

48.30.290 Cancellation or failure to renew based upon sex or marital status deemed unfair practice—Rules and regulations—Enforcement. Pursuant to the authority granted under provisions of RCW 48.02.060 and 48.02.080 as now or hereafter amended, the insurance commissioner shall make rules and regulations to carry out RCW 48.30.280 and shall enforce RCW 48.30.280. [1971 ex.s. c 174 § 2.]

Chapter 48.31

MERGERS, REHABILITATION, LIQUIDATION

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Dissolution of business corporation: Chapter 23A.28 RCW.

48.31.010 Merger or consolidation. (1) Subject to the provisions of RCW 48.08.080, relating to the mutualization of stock insurers, RCW 48.09.350, relating to the conversion or reinsurance of mutual insurers, and RCW 48.10.330, relating to the consolidation or conversion of reciprocal insurers, a domestic insurer may merge or consolidate with another insurer, subject to the following conditions:

(a) The plan of merger or consolidation must be submitted to and be approved by the commissioner in advance of the merger or consolidation.

(b) The commissioner shall not approve any such plan unless, after a hearing, pursuant to such notice as the commissioner may require, he finds that it is fair, equitable, consistent with law, and that no reasonable objection exists. If the commissioner fails to approve the plan, he shall state his reasons for such failure in his order made on such hearing. The insurers involved in the merger shall bear the expense of the mailing of the notice of hearing and of the order on hearing.

(c) No director, officer, member, or subscriber of any such insurer, except as is expressly provided by the plan of merger or consolidation, shall receive any fee, commission, other compensation or valuable consideration whatsoever, for in any manner aiding, promoting or assisting in the merger or consolidation.

(d) Any merger or consolidation as to an incorporated domestic insurer shall in other respects be governed by the general laws of this state relating to business corporations. Except, that as to domestic mutual insurers, approval by two-thirds of its members who vote thereon pursuant to such notice and procedure as was approved by the commissioner shall constitute approval of the merger or consolidation as respects the insurer's members.

(2) Reinsurance of all or substantially all of the insurance in force of a domestic insurer by another insurer shall be deemed a consolidation for the purposes of this section. [1973 1st ex.s. c 107 § 3; 1961 c 194 § 11; 1947 c 79 § .31.01; Rem. Supp. 1947 § 45.31.01.]

Severability—1973 1st ex.s. c 107: See note following RCW 48.17.330.

48.31.020 "Insurer"—Scope of term. For the purposes of this chapter, other than as to RCW 48.31.010, and in addition to persons included under RCW 48.31.110, the term "insurer" shall be deemed to include all persons purporting to be engaged as insurers in the business of insurance in this state, and to persons in process of organization to become insurers. [1947 c 79 § .31.02; Rem. Supp. 1947 § 45.31.02.]

48.31.030 Rehabilitation—Grounds. The commissioner may apply for an order directing him to rehabilitate a domestic insurer upon one or more of the following grounds: That the insurer

(1) Is insolvent; or

(2) Has refused to submit its books, records, accounts or affairs to the reasonable examination of the commissioner; or

(3) Has failed to comply with the commissioner's order, made pursuant to law, to make good an impairment of capital (if a stock insurer) or an impairment of assets (if a mutual or reciprocal insurer) within the time prescribed by law; or

(4) Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business in that of any other insurer without first having obtained the written approval of the commissioner; or

(5) Is found, after examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to its members, subscribers, or stockholders, or to the public; or

(6) Has wilfully violated its charter or any law of this state; or

(7) Has an officer, director, or manager who has refused to be examined under oath, concerning its affairs, for which purpose the commissioner is authorized to conduct and to enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States, in which any such officer, director or manager may then presently be, to the full extent permitted by the laws of any such other state or territory, this special authorization considered; or

(8) Has been the subject of an application for the appointment of a receiver, trustee, custodian or sequestrator of the insurer or of its property, or if a receiver, trustee, custodian, or sequestrator is appointed by a federal court or if such appointment is imminent; or

(9) Has consented to such an order through a majority of its directors, stockholders, members, or subscribers; or

(10) Has failed to pay a final judgment rendered against it in any state upon any insurance contract issued or assumed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later. [1949 c 190 § 28; 1947 c 79 § .31.03; Rem. Supp. 1949 § 45.31.03.]

48.31.040 Rehabilitation—Order—Termination.

(1) An order to rehabilitate a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof, and to take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the court may direct.

(2) If at any time the commissioner deems that further efforts to rehabilitate the insurer would be useless, he may apply to the court for an order of liquidation.

(3) The commissioner, or any interested person upon due notice to the commissioner, at any time may apply for an order terminating the rehabilitation proceeding and permitting the insurer to resume possession of its

property and the conduct of its business, but no such order shall be granted except when, after a full hearing, the court has determined that the purposes of the proceedings have been fully accomplished. [1947 c 79 § .31.04; Rem. Supp. 1947 § 45.31.04.]

48.31.050 Liquidation—Grounds. The commissioner may apply for an order directing him to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trustee assets in this state, regardless of whether or not there has been a prior order directing him to rehabilitate such insurer, upon any of the grounds specified in RCW 48.31.030 or upon any one or more of the following grounds: That the insurer

(1) Has ceased transacting business for a period of one year; or

(2) Is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator under any law except this code; or

(3) Has not organized or completed its organization and obtained a certificate of authority as an insurer prior to the expiration or revocation of its solicitation permit. [1947 c 79 § .31.05; Rem. Supp. 1947 § 45.31.05.]

48.31.060 Liquidation—Order. (1) An order to liquidate the business of a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in his own name as commissioner or in the name of the insurer as the court may direct, to give notice to all creditors who may have claims against the insurer to present such claims.

(2) The commissioner may apply under this chapter for an order dissolving the corporate existence of a domestic insurer:

(a) Upon his application for an order of liquidation of such insurer, or at any time after such order has been granted; or

(b) Upon the grounds specified in item (3) of RCW 48.31.050, regardless of whether an order of liquidation is sought or has been obtained. [1947 c 79 § .31.06; Rem. Supp. 1947 § 45.31.06.]

48.31.070 Liquidation—Alien insurers. An order to liquidate the business of the United States branch of an alien insurer having trustee assets in this state shall be in the same terms as those prescribed for domestic insurers, except that only the assets of the business of such United States branch shall be included therein. [1947 c 79 § .31.07; Rem. Supp. 1947 § 45.31.07.]

48.31.080 Conservation of assets—Foreign insurers. The commissioner may apply for an order directing him to conserve the assets within this state of a foreign insurer upon any one or more of the following grounds:

(1) Upon any of the grounds specified in items (1) to (9) inclusive of RCW 48.31.030 and in item (2) of RCW 48.31.050.

(2) That its property has been sequestered in its domiciliary sovereignty or in any other sovereignty. [1947 c 79 § .31.08; Rem. Supp. 1947 § 45.31.08.]

48.31.090 Conservation of assets—Alien insurers. The commissioner may apply for an order directing him to conserve the assets within this state of an alien insurer upon any one or more of the following grounds:

(1) Upon any of the grounds specified in items (1) to (9) inclusive of RCW 48.31.030 and in item (2) of RCW 48.31.050; or

(2) That the insurer has failed to comply, within the time designated by the commissioner, with an order of the commissioner pursuant to law to make good an impairment of its trusted funds; or

(3) That the property of the insurer has been sequestered in its domiciliary sovereignty or elsewhere. [1947 c 79 § .31.09; Rem. Supp. 1947 § 45.31.09.]

48.31.100 Foreign insurers—Conservation, ancillary proceedings. (1) An order to conserve the assets of a foreign or alien insurer shall direct the commissioner forthwith to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

(2) Whenever a domiciliary receiver is appointed for any such insurer in its domiciliary state which is also a reciprocal state, as defined in RCW 48.31.110, the court shall on application of the commissioner appoint the commissioner as the ancillary receiver in this state, subject to the provisions of the uniform insurers liquidation act. [1947 c 79 § .31.10; Rem. Supp. 1947 § 45.31.10.]

48.31.110 Uniform insurers liquidation act. This section and RCW 48.31.120 to 48.31.180, inclusive, comprise and may be cited as the uniform insurers liquidation act. For the purposes of this act:

(1) "Insurer" means any person, firm, corporation, association, or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by, the commissioner, or the equivalent insurance supervisory official of another state.

(2) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer.

(3) "State" means any state of the United States, and also the District of Columbia and Puerto Rico.

(4) "Foreign country" means territory not in any state.

(5) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become authorized to do business in such state, has, at the commencement of delinquency proceedings, the largest

amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States; and any such insurer is deemed to be domiciled in such state.

(6) "Ancillary state" means any state other than a domiciliary state.

(7) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of this act are in force, including the provisions requiring that the insurance commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer.

(8) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders, or all policyholders and creditors in the United States, shall be deemed general assets.

(9) "Preferred claim" means any claim with respect to which the law of a state or of the United States accords priority of payment from the general assets of the insurer.

(10) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

(11) "Secured claim" means any claim secured by mortgage, trust, deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which more than four months prior to the commencement of delinquency proceedings in the state of the insurer's domicile have become liens upon specific assets by reason of judicial process.

(12) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context may require. [1961 c 194 § 12; 1947 c 79 § .31.11; Rem. Supp. 1947 § 45.31.11.]

48.31.120 Delinquency proceedings—Domestic insurers. (1) Whenever under the laws of this state a receiver is to be appointed in delinquency proceedings for an insurer domiciled in this state, the court shall appoint the commissioner as such receiver. The court shall direct the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

(2) As domiciliary receiver the commissioner shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer wherever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer, or to liquidate the United States branch of an alien insurer domiciled in this state, and he shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to

assets located in their respective states, the rights and powers which are hereinafter prescribed for ancillary receivers appointed in this state as to assets located in this state.

(3) The filing or recording of the order directing possession to be taken, or a certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded.

(4) The commissioner as domiciliary receiver shall be responsible on his official bond for the proper administration of all assets coming into his possession or control. The court may at any time require an additional bond from him or his deputies if deemed desirable for the protection of the assets.

(5) Upon taking possession of the assets of an insurer the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by the laws of this state for the purpose of liquidating, rehabilitating, reorganizing, or conserving the affairs of the insurer.

(6) In connection with delinquency proceedings the commissioner may appoint one or more special deputy commissioners to act for him, and may employ such counsel, clerks, and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of the duties imposed upon them special deputies shall possess all the powers given to, and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings. [1947 c 79 § .31.12; Rem. Supp. 1947 § 45.31.12.]

48.31.130 Delinquency proceedings—Foreign insurers. (1) Whenever under the laws of this state an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment (a) if he finds that there are sufficient assets of such insurer located in this state to justify the appointment of an ancillary receiver, or (b) if ten or more persons resident in this state having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

(2) The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer located in this state, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He shall also be entitled to recover the other assets of the insurer located in this state except that upon the appointment of an ancillary receiver in this state, the

ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets, as a receiver of an insurer domiciled in this state.

(3) The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he may be entitled under the laws of this state. [1947 c 79 § .31.13; Rem. Supp. 1947 § 45.31.13.]

48.31.140 Claims of nonresidents against domestic insurer. (1) In a delinquency proceeding begun in this state against an insurer domiciled in this state, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in reciprocal states may either (a) be proved in this state as provided by law, or (b), if ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state as provided in RCW 48.31.150 with respect to ancillary proceedings in this state, the final allowance of such claim by the courts in the ancillary state shall be accepted in this state as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state. [1947 c 79 § .31.14; Rem. Supp. 1947 § 45.31.14.]

48.31.150 Claims of residents against foreign insurer. (1) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer, who reside within this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceeding.

(2) Controverted claims belonging to claimants residing in this state may either (a) be proved in the domiciliary state as provided by the law of that state, or (b), if ancillary proceedings have been commenced in this state, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this state, he shall file his claim with the ancillary receiver in the manner provided by the law of this state for the proving

of claims against insurers domiciled in this state, and he shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least forty days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver, within thirty days after the giving of such notice, shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state. [1947 c 79 § .31.15; Rem. Supp. 1947 § 45.31.15.]

48.31.160 Priority of certain claims. (1) In a delinquency proceeding against an insurer domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims whether owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this state shall be preferred if like claims are preferred by the laws of that state.

(3) The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(4) The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this act, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state. [1947 c 79 § .31.16; Rem. Supp. 1947 § 45.31.16.]

48.31.170 Attachment, garnishment, execution stayed. During the pendency of delinquency proceedings in this or any reciprocal state no action or proceeding in the nature of an attachment, garnishment, or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding. [1947 c 79 § .31.17; Rem. Supp. 1947 § 45.31.17.]

48.31.180 Severability—Uniformity of interpretation. (1) If any provision 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.

(2) This uniform insurers liquidation act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. To the extent that its provisions, when applicable, conflict with other provisions of this chapter, the provisions of this act shall control. [1947 c 79 § .31.18; Rem. Supp. 1947 § 45.31.18.]

48.31.190 Commencement of proceeding—Venue—Effect of appeal. (1) Proceedings under this chapter involving a domestic insurer shall be commenced in the superior court for the county in which is located the insurer's home office. Proceedings under this chapter involving other insurers shall be commenced in the superior court for Thurston county.

(2) The commissioner shall commence any such proceeding, the attorney general representing him, by an application to the court or to any judge thereof, for an order directing the insurer to show cause why the commissioner should not have the relief prayed for.

(3) Upon a showing of an emergency or threat of imminent loss to policyholders of the insurer the court may issue an ex parte order authorizing the commissioner immediately to take over the premises and assets of the insurer, the commissioner then to preserve the status quo, pending a hearing on the order to show cause, which shall be heard as soon as the court calendar permits in preference to other civil cases.

(4) In response to any order to show cause issued under this chapter the insurer shall have the burden of going forward with and producing evidence to show why the relief prayed for by the commissioner is not required.

(5) On the return of such order to show cause, and after a full hearing, the court shall either deny the relief sought in the application or grant the relief sought in the application together with such other relief as the nature of the case and the interest of policyholders, creditors, stockholders, members, subscribers, or the public may require.

(6) No appeal taken from a superior court order, entered after a hearing, granting the commissioner's petition to rehabilitate an insurer or to carry out an insolvency proceeding under this chapter, shall stay the action of the commissioner in the discharge of his responsibilities under this chapter, pending a decision by the appellate court in the matter.

(7) In any proceeding under this chapter the commissioner and his deputies shall be responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may at any time require an additional bond from the commissioner or his deputies. [1969 ex.s. c 241 § 13; 1967 c 150 § 31; 1947 c 79 § .31.19; Rem. Supp. 1947 § 45.31.19.]

48.31.200 Injunctions. (1) Upon application by the commissioner for such an order to show cause or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents, and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

(2) The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof. [1947 c 79 § .31.20; Rem. Supp. 1947 § 45.31.20.]

48.31.210 Change of venue. At any time after the commencement of a proceeding under this chapter the commissioner may apply to the court for an order changing the venue of, and removing the proceeding to Thurston county, or to any other county of this state in which he deems that such proceeding may be most economically and efficiently conducted. [1947 c 79 § .31.21; Rem. Supp. 1947 § 45.31.21.]

48.31.220 Deposit of moneys collected. The moneys collected by the commissioner in a proceeding under this chapter, shall be, from time to time, deposited in one or more state or national banks, savings banks, or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this state, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking law of this state. The commissioner may in his discretion deposit such moneys or any part thereof in a national bank or trust company as a trust fund. [1947 c 79 § .31.22; Rem. Supp. 1947 § 45.31.22.]

48.31.230 Exemption from filing fees. The commissioner shall not be required to pay any fee to any public officer in this state for filing, recording, issuing a transcript or certificate, or authenticating any paper or instrument pertaining to the exercise by the commissioner of any of the powers or duties conferred upon him under this chapter, whether or not such paper or instrument be executed by the commissioner or his deputies, employees, or attorneys of record and whether or not it is connected with the commencement of an action or proceeding by or against the commissioner, or with the subsequent conduct of such action or proceeding. [1947 c 79 § .31.23; Rem. Supp. 1947 § 45.31.23.]

48.31.240 Borrowing on pledge of assets. For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this chapter the commissioner may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property whether real, personal or mixed of such insurer, and the commissioner, subject to the approval of the court, shall have power to take any and all other action necessary and proper to consummate any such loans and to provide for the repayment thereof. The commissioner shall be under no obligation personally or in his official capacity as commissioner to repay any loan made pursuant to this section. [1947 c 79 § .31.24; Rem. Supp. 1947 § 45.31.24.]

48.31.250 Report to legislature. The commissioner shall transmit to the legislature in his annual report, the names of all insurers proceeded against under this chapter together with such facts as shall acquaint the policyholders, creditors, stockholders, and the public with the proceedings. To that end the special deputy commissioner in charge of any such insurer shall file annually with the commissioner a report of the affairs of the insurer. [1947 c 79 § .31.25; Rem. Supp. 1947 § 45.31.25.]

48.31.260 Liquidation—Date rights, liabilities fixed. The rights and liabilities of the insurer and of its creditors, policyholders, stockholders, members, subscribers, and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which made the order, subject to the provisions of RCW 48.31.300 with respect to the rights of claimants holding contingent claims. [1947 c 79 § .31.26; Rem. Supp. 1947 § 45.31.26.]

48.31.270 Voidable transfers. (1) Any transfer of, or lien upon, the property of an insurer which is made or created within four months prior to the granting of an order to show cause under this chapter with the intent of giving to any creditor or of enabling him to obtain a greater percentage of his debt than any other creditor of

the same class and which is accepted by such creditor having reasonable cause to believe that such a preference will occur, shall be voidable.

(2) Every director, officer, employee, stockholder, member, subscriber, and any other person acting on behalf of such insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such insurer or the benefit thereof shall be personally liable therefor and shall be bound to account to the commissioner.

(3) The commissioner as liquidator, rehabilitator or conservator in any proceeding under this chapter, may avoid any transfer of, or lien upon the property of an insurer which any creditor, stockholder, subscriber or member of such insurer might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the granting of an order to show cause under this chapter. Such property or its value may be recovered from anyone who has received it except a bona fide holder for value as above specified. [1947 c 79 § .31.27; Rem. Supp. 1947 § 45.31.27.]

48.31.280 Priority of claims for compensation. (1) Compensation actually owing to employees other than officers of an insurer, for services rendered within three months prior to the commencement of a proceeding against the insurer under this chapter, but not exceeding three hundred dollars for each such employee, shall be paid prior to the payment of any other debt or claim, and in the discretion of the commissioner may be paid as soon as practicable after the proceeding has been commenced; except, that at all times the commissioner shall reserve such funds as will in his opinion be sufficient for the expenses of administration.

(2) Such priority shall be in lieu of any other similar priority which may be authorized by law as to the wages or compensation of such employees. [1947 c 79 § .31.28; Rem. Supp. 1947 § 45.31.28.]

48.31.290 Offsets. (1) In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) of this section.

(2) No offset shall be allowed in favor of any such person where (a) the obligation of the insurer to such person would not at the date of the entry of any liquidation order, or otherwise, as provided in RCW 48.31-.260, entitle him to share as a claimant in the assets of the insurer, or (b) the obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset, or (c) the obligation of such person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or is to pay a balance upon a subscription to the capital stock of a stock insurer. [1947 c 79 § .31.29; Rem. Supp. 1947 § 45.31.29.]

48.31.300 Allowance of contingent and other claims.

(1) No contingent claim shall share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to RCW 48-.31.310, except that such claims shall be considered, if properly presented, and may be allowed to share where:

(a) Such claim becomes absolute against the insurer on or before the last day fixed for filing of proofs of claim against the assets of such insurer, or

(b) there is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent.

(2) Where an insurer has been so adjudicated to be insolvent any person who has a cause of action against an insured of such insurer under a liability insurance policy issued by such insurer, shall have the right to file a claim in the liquidation proceeding, regardless of the fact that such claim may be contingent, and such claim may be allowed

(a) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and

(b) if such person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and

(c) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be were it not in liquidation.

No judgment against such an insured taken after the date of the entry of the liquidation order shall be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default, inquest or by collusion prior to the entry of the liquidation order shall be considered as conclusive evidence in the liquidation proceeding either of the liability of such insured to such person upon such cause of action or of the amount of damages to which such person is therein entitled.

(3) No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation or such other date set by the court for fixation of rights and liabilities as provided in RCW 48.31-.260 unless the claimant shall surrender his security to the commissioner in which event the claim shall be allowed in the full amount for which it is valued. [1947 c 79 § .31.30; Rem. Supp. 1947 § 45.31.30.]

48.31.310 Time to file claims. (1) If upon the granting of an order of liquidation under this chapter or at any time thereafter during the liquidation proceeding, the insurer shall not be clearly solvent, the court shall after such notice and hearing as it deems proper, make an order declaring the insurer to be insolvent. Thereupon, regardless of any prior notice which may have been given to creditors, the commissioner shall notify all persons who may have claims against such insurer and who have not filed proper proofs thereof, to present the

same to him, at a place specified in such notice, within four months from the date of the entry of such order, or if the commissioner shall certify that it is necessary, within such longer time as the court shall prescribe. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court.

(2) Proofs of claim may be filed subsequent to the date specified, but no such claim shall share in the distribution of the assets until all allowed claims, proofs of which have been filed before said date, have been paid in full with interest. [1947 c 79 § .31.31; Rem. Supp. 1947 § 45.31.31.]

48.31.320 Report for assessment. Within three years from the date an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer was filed in the office of the clerk of the court by which such order was made, the commissioner may make a report to the court setting forth

- (1) the reasonable value of the assets of the insurer;
- (2) the insurer's probable liabilities; and

(3) the probable necessary assessment, if any, to pay all claims and expenses in full, including expenses of administration. [1947 c 79 § .31.32; Rem. Supp. 1947 § 45.31.32.]

48.31.330 Levy of assessment. (1) Upon the basis of the report provided for in RCW 48.31.320, including any amendments thereof, the court, ex parte, may levy one or more assessments against all members of such insurer who, as shown by the records of the insurer, were members (if a mutual insurer) or subscribers (if a reciprocal insurer) at any time within one year prior to the date of issuance of the order to show cause under RCW 48.31.190.

(2) Such assessment or assessments shall cover the excess of the probable liabilities over the reasonable value of the assets, together with the estimated cost of collection and percentage of uncollectibility thereof. The total of all assessments against any member or subscriber with respect to any policy, whether levied pursuant to this chapter or pursuant to any other provisions of this code, shall be for no greater amount than that specified in the policy or policies of the member or subscriber and as limited under this code; except that if the court finds that the policy was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, the court may determine the upper limit of such assessment upon the basis of such minimum rate.

(3) No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with this code. [1947 c 79 § .31.33; Rem. Supp. 1947 § 45.31.33.]

48.31.340 Order for payment of assessment. After levy of assessment as provided in RCW 48.31.330, upon the filing of a further detailed report by the commissioner, the court shall issue an order directing each member (if a mutual insurer) or each subscriber (if a

reciprocal insurer) if he shall not pay the amount assessed against him to the commissioner on or before a day to be specified in the order, to show cause why he should not be held liable to pay such assessment together with costs as set forth in RCW 48.31.360 and why the commissioner should not have judgment therefor. [1947 c 79 § .31.34; Rem. Supp. 1947 § 45.31.34.]

48.31.350 Publication, transmittal of assessment order. The commissioner shall cause a notice of such assessment order setting forth a brief summary of the contents of such order to be:

(1) Published in such manner as shall be directed by the court; and

(2) Enclosed in a sealed envelope, addressed and mailed postage prepaid to each member or subscriber liable thereunder at his last known address as it appears on the records of the insurer, at least twenty days before the return day of the order to show cause provided for in RCW 48.31.340. [1947 c 79 § .31.35; Rem. Supp. 1947 § 45.31.35.]

48.31.360 Judgment upon the assessment. (1) On the return day of the order to show cause provided for in RCW 48.31.340 if the member or subscriber does not appear and serve verified objections upon the commissioner, the court shall make an order adjudging that such member or subscriber is liable for the amount of the assessment against him together with ten dollars costs, and that the commissioner may have judgment against the member or subscriber therefor.

(2) If on such return day the member or subscriber shall appear and serve verified objections upon the commissioner there shall be a full hearing before the court or a referee to hear and determine, who, after such hearing, shall make an order either negating the liability of the member or subscriber to pay the assessment or affirming his liability to pay the whole or some part thereof together with twenty-five dollars costs and the necessary disbursements incurred at such hearing, and directing that the commissioner in the latter case may have judgment therefor.

(3) A judgment upon any such order shall have the same force and effect, and may be entered and docketed, and may be appealed from as if it were a judgment in an original action brought in the court in which the proceeding is pending. [1947 c 79 § .31.36; Rem. Supp. 1947 § 45.31.36.]

Chapter 48.31A

REGULATION OF ACQUISITION OF CONTROL OF DOMESTIC INSURERS—HOLDING COMPANY SYSTEMS

Sections

48.31A.010 Definitions.

48.31A.020 Tender offers, request or agreement to acquire voting securities which result in control of domestic insurer—Prohibited unless requirements satisfied—Approval or disapproval.

48.31A.030 Tender offers, request or agreement to acquire voting securities which result in control of domestic insurer—Filings with commissioner required.

- 48.31A.040 Tender offers, request or agreement to acquire voting securities which result in control of domestic insurer—Information may be required of partners, officers, directors and owners.
- 48.31A.050 Tender offers, request or agreement to acquire voting securities which result in control of domestic insurer—Disapproval by commissioner—Time limitation—Grounds—Application of RCW 48.31A.020–48.31A.050.
- 48.31A.060 Insurer members of insurance holding company system—Registration—Filing registration statement—Contents—Information required—Exemptions—Disclaimer of affiliation.
- 48.31A.070 Material transactions by registered insurers with affiliates—Standards.
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- 48.31A.090 Extraordinary dividends or distributions by insurers subject to registration—Notice—Approval or disapproval.
- 48.31A.100 Examination of registered insurers—Powers of commissioner.
- 48.31A.110 Confidentiality of reports.
- 48.31A.120 Jurisdiction of courts.
- 48.31A.130 Rules, regulations and orders.
- 48.31A.900 Severability—1971 ex.s. c 13.

48.31A.010 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Affiliate" of, or a person "affiliated" with, a specific person, shall mean a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Control", including "controlling", "controlled by", and "under common control with", shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not exist in fact.

(3) "Insurance holding company system" shall consist of two or more affiliated persons, one or more of which is an insurer.

(4) "Insurer" shall have the same meaning given it in RCW 48.01.050.

(5) "Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

(6) "Subsidiary" of a specified person shall mean an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

(7) "Commissioner" shall mean the insurance commissioner. [1971 ex.s. c 13 § 3.]

Reviser's note: Throughout chapter 48.31A RCW the terms "this act" or "this 1971 amendatory act" have been changed to "this chapter". "This act" or "this 1971 amendatory act" [1971 ex.s. c 13] consists of this chapter, RCW 48.20.412, 48.21.142, and the 1971 amendment to RCW 48.13.260.

48.31A.020 Tender offers, request or agreement to acquire voting securities which result in control of domestic insurer—Prohibited unless requirements satisfied—Approval or disapproval. No person other than the issuer or an affiliate of the issuer shall make a tender offer for a request or invitation for tenders of, or agreement to exchange securities for or otherwise acquire, any voting security or any security convertible into a voting security of a domestic insurer or of any other person controlling a domestic insurer if, as a result of the consummation thereof, the person making such tender offer, request or agreement, would directly or indirectly, acquire actual control of such insurer, unless:

(1) Such person has filed with the commissioner a statement containing such of the following information, and such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate in the public interest or for the protection of policyholders:

(a) The background and identity of all persons by whom or on whose behalf the purchases or the exchange, merger, or other acquisition of control are to be effected;

(b) The source and amount of the funds or other consideration used or to be used in making the purchases or in effecting the exchange, merger or other acquisition of control, and, if any part of such funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the purchases or effecting the exchange, merger, or other acquisition of control, a description of the transaction and the names of the parties thereto;

(c) Any plans or proposals which such persons may have to liquidate such insurer, to sell its assets or merge it with any person, or to make any other major change in its business or corporate structure or management;

(d) The amount of each class of voting securities, or securities which may be converted into voting securities, of such insurer or such controlling person, which are beneficially owned, and the amount of each class of voting securities or securities which may be converted into voting securities of such insurer or such controlling person concerning which there is a right to acquire beneficial ownership, by each such person and by each such affiliate;

(e) Information as to any contracts, arrangements or understandings with any person with respect to any securities of such insurer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements or understandings have been entered into, and giving the details thereof; and

(f) A copy of any such agreement, and any amendments thereto, to exchange or otherwise acquire securities or to merge with or otherwise to acquire control of such insurer; and

(2) The time for disapproval, as provided in RCW 48.31A.050, including any agreed extensions, has elapsed or approval has been given by the commissioner. [1971 ex.s. c 13 § 4.]

48.31A.030 Tender offers, request or agreement to acquire voting securities which result in control of domestic insurer—Filings with commissioner required. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of such voting securities for actual control of a domestic insurer made by or on behalf of any such person shall contain such of the information specified in RCW 48.31A.020 as the commissioner may prescribe, and shall be filed with the commissioner at least ten days prior to the time such material is first published or sent or given to security holders. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the commissioner may prescribe as necessary or appropriate in the public interest or for the protection of policyholders and stockholders, and shall be filed with the commissioner at least ten days prior to the time copies of such material are first published or sent or given to security holders. [1971 ex.s. c 13 § 5.]

48.31A.040 Tender offers, request or agreement to acquire voting securities which result in control of domestic insurer—Information may be required of partners, officers, directors and owners. If the person required to file the statement referred to in RCW 48.31A.020 is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by RCW 48.31A.020 shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If the person required to file the statement referred to in RCW 48.31A.020 is a corporation, the commissioner may require that the information called for by RCW 48.31A.020 be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding securities of such corporation. [1971 ex.s. c 13 § 6.]

48.31A.050 Tender offers, request or agreement to acquire voting securities which result in control of domestic insurer—Disapproval by commissioner—Time limitation—Grounds—Application of RCW 48.31A.020–48.31A.050. (1) In the absence of approval by the commissioner the purchases, exchanges, mergers or other acquisitions of control referred to in RCW 48.31A.020 may be made unless the commissioner, within twenty days after the statement required by RCW 48.31A.020 has been filed with him, disapproves the purchases, exchanges, mergers or other acquisitions of

control. The commissioner may disapprove any such transaction within twenty days after such filing if he finds that:

(a) After the change of control the domestic insurer could not satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance of its last certificate of authority to do the insurance business which it intends to transact in this state;

(b) The effect of the purchases, exchanges, mergers, or other acquisitions of control may be substantially to lessen competition in insurance in this state or tend to create a monopoly therein; or would violate the laws of this state or the United States relating to monopolies or restraint of trade;

(c) The financial condition of an acquiring person is such as would jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or, in the case of an acquisition of control, the interest of any remaining shareholders who are unaffiliated with the acquiring person;

(d) The plans or proposals which the acquiring person has to liquidate the insurer, to sell its assets, or to merge it with any person, or to make any other major change in its business or corporate structure or management, are unfair or prejudicial to policyholders; or

(e) The competence, experience and integrity of those persons who would control the operation of the insurer indicate that it would not be in the interest of policyholders, shareholders, or the public to permit them to do so.

(2) The provisions of RCW 48.31A.020 through 48.31A.050 apply to any change of control if and to the extent that the commissioner, by rule or regulation or by order, shall exempt the same from the provisions of such sections as not comprehended within the purpose of this section. [1971 ex.s. c 13 § 7.]

48.31A.060 Insurer members of insurance holding company system—Registration—Filing registration statement—Contents—Information required—Exemptions—Disclaimer of affiliation. (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except that such requirements shall not apply to a foreign insurer domiciled in a jurisdiction which has adopted by statute or regulation disclosure requirements and standards substantially similar to those contained in this chapter. Any insurer which is subject to registration under the provisions of this section shall register within sixty days after August 9, 1971 or fifteen days after it becomes subject to registration, whichever is later, unless the commissioner, for good cause shown, extends the time for registration, and then within such extended time. Nothing in this section shall be construed to prohibit the commissioner from requesting any authorized insurer, which is a member of a holding company system, which is not subject to registration under the provisions of this section for a copy of the registration statement or other information filed by such insurance company

with the insurance regulatory authority of its state of domicile.

(2) Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(a) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(b) The following transactions currently outstanding between such insurer and its affiliates:

(i) Loans, other investments, or purchases, sales or exchanges of securities of the affiliate by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements, based upon generally accepted accounting principles, and

(vi) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company; and

(c) Other matters concerning transactions between a registered insurer and any affiliate as may be required by the commissioner.

(3) No information need be disclosed on the registration statement filed pursuant to the provisions of this section if such information is not material for the purposes of this chapter. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one percent or less of an insurer's admitted assets as of December 31 immediately preceding shall not be deemed material for purposes of this section.

(4) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on forms provided by the commissioner on or before the fifteenth day of the following month in which it learns of each such change or addition.

(5) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(6) Two or more affiliated insurers subject to registration hereunder may file a consolidated registration statement or consolidated reports amending their respective consolidated statements or their individual registration statements so long as such consolidated filings correctly reflect the condition of and transactions between such persons.

(7) The commissioner may allow any insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on

behalf of any affiliated insurer which is required to register under subsection (1) of this section, and to file all information and material required to be filed under the provisions of this chapter.

(8) The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section as not comprehended within the purposes thereof.

(9) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and basis for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard, and after making specific findings of fact to support such disallowance. [1971 ex.s. c 13 § 8.]

48.31A.070 Material transactions by registered insurers with affiliates—Standards. Material transactions by registered insurers with their affiliates occurring after August 9, 1971 shall be subject to the following standards:

(1) The terms shall be fair and reasonable;

(2) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transaction; and

(3) The insurer's surplus to policyholders following any dividends or distributions to shareholders or affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. [1971 ex.s. c 13 § 9.]

48.31A.080 Factors to be considered in determining reasonableness of insurer's surplus to policyholders. For purposes of this chapter, in determining whether an insurer's surplus to policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's surplus to policyholders;

(8) The surplus to policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in subsidiaries. [1971 ex.s. c 13 § 10.]

48.31A.090 Extraordinary dividends or distributions by insurers subject to registration—Notice—Approval or disapproval. No insurer subject to registration under the provisions of this chapter shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until sixty days after the commissioner has received notice of the intent to declare such dividend or distribution and has not within such period disapproved such payment, or the commissioner shall have approved such payment within such sixty-day period. For purposes of this section, an extraordinary dividend or distribution is any dividend or distribution which, together with other dividends or distributions made within the preceding twelve months, exceeds the greater of ten percent of such insurer's surplus to policyholders as of December 31 of the year immediately preceding, or the net gain from operations of such insurer if such insurer is a life insurer, or the net investment income if such insurer is not a life insurer, for the twelve-month period ending December 31 of the year immediately preceding. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon stockholders until the commissioner has approved the payment of such dividend or distribution or the commissioner has not disapproved such payment within the period referred to above. [1971 ex.s. c 13 § 11.]

48.31A.100 Examination of registered insurers—Powers of commissioner. (1) Subject to the limitations contained in this section and in addition to the powers which the commissioner has under chapter 48.03 RCW, relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under the provisions of this chapter to produce such records, books, or papers in the possession of the insurer or affiliates as shall be necessary to verify the information required to be contained in the insurer's registration statement, and any additional information pertinent to transactions between insurer and affiliates. Such books, records, papers and information shall be examined in the manner prescribed in chapter 48.03 RCW relating to the time, place and expense of examination.

(2) The purposes of the examination, under the provisions of subsection (1) of this section, shall be to verify the registration statement and any addition or amendment thereto made pursuant to the provisions of this chapter. [1971 ex.s. c 13 § 12.]

48.31A.110 Confidentiality of reports. Every report made pursuant to the provisions of this chapter, including every report of examination or investigation, and any duly authenticated copy thereof in the possession of any person subject to the provisions of this chapter, shall be a confidential communication, shall not be subject to subpoena and shall not be made public by the commissioner without the prior written consent of the insurer or unless the commissioner determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, in which event he may make a public record or publish all or any part thereof in such manner as he may deem appropriate. [1971 ex.s. c 13 § 13.]

48.31A.120 Jurisdiction of courts. Any person obtaining or attempting to obtain control of a domestic insurer shall by such act subject such person to the jurisdiction of the courts of this state. [1971 ex.s. c 13 § 14.]

48.31A.130 Rules, regulations and orders. The commissioner may, upon notice and opportunity for all interested parties to be heard, issue such reasonable rules, regulations and orders as shall be necessary to carry out and effectuate provisions of this chapter. [1971 ex.s. c 13 § 15.]

48.31A.900 Severability—1971 ex.s. c 13. If any provision of this 1971 amendatory act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this 1971 amendatory act which can be given effect without the invalid provisions or application and for this purpose the provisions of this 1971 amendatory act are separable. [1971 ex.s. c 13 § 17.]

Chapter 48.32 WASHINGTON INSURANCE GUARANTY ASSOCIATION ACT

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48.32.010 Purpose. The purpose of this chapter is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers. [1971 ex.s. c 265 § 1.]

48.32.020 Scope. This chapter shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, and ocean marine insurance. [1971 ex.s. c 265 § 2.]

48.32.030 Definitions. As used in this chapter:

(1) "Account" means any one of the three accounts created in RCW 48.32.040.

(2) "Association" means the Washington Insurance Guaranty Association created in RCW 48.32.040.

(3) "Commissioner" means the insurance commissioner of this state.

(4) "Covered claim" means an unpaid claim, excluding one for unearned premiums, which arises out of and is within the coverage of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after the first day of April, 1971 and (a) the claimant or insured is a resident of this state at the time of the insured event; or (b) the property from which the claim arises is permanently located in this state. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(5) "Insolvent insurer" means an insurer (a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent by a court of competent jurisdiction, and which adjudication was subsequent to the first day of April, 1971.

(6) "Member insurer" means any person who (a) writes any kind of insurance to which this chapter applies under RCW 48.32.020, including the exchange of reciprocal or interinsurance contracts, and (b) is licensed to transact insurance in this state.

(7) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(8) "Person" means any individual, corporation, partnership, association, or voluntary organization. [1971 ex.s. c 265 § 3.]

48.32.040 Creation of the association. There is hereby created a nonprofit unincorporated legal entity to be known as the Washington Insurance Guaranty Association. All insurers defined as member insurers in RCW

48.32.030(6) shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under RCW 48.32.070 and shall exercise its powers through a board of directors established under RCW 48.32.050. For purposes of administration and assessment, the association shall be divided into three separate accounts: (1) The workmen's compensation insurance account; (2) the automobile insurance account; and (3) the account for all other insurance to which this chapter applies. [1971 ex.s. c 265 § 4.]

48.32.050 Board of directors. (1) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioners. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty days after May 21, 1971, the commissioner may appoint the initial members of the board of directors.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors. [1971 ex.s. c 265 § 5.]

48.32.060 Powers and duties of the association. (1) The association shall:

(a) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within thirty days after the determination of insolvency, or before the policy expiration date if less than thirty days after the determination, or before the insured replaces the policy or on request effects cancellation, if he does so within thirty days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars, except that the association shall pay the full amount of any covered claim arising out of a workmen's compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c) Allocate claims paid and expenses incurred among the three accounts enumerated in RCW 48.32.040 separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under subsection (1)(a) above subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of

examinations under RCW 48.32.110, and other expenses authorized by this chapter. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than two percent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims.

(e) Notify such persons as the commissioner directs under RCW 48.32.080(2)(a).

(f) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter.

(2) The association may:

(a) Appear in, defend, and appeal any action on a claim brought against the association.

(b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(c) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

(d) Sue or be sued.

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this chapter.

(f) Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

(g) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year. [1971 ex.s. c 265 § 6.]

48.32.070 Plan of operation. (1)(a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within ninety days following May 21, 1971 or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under RCW 48.32.060 will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursing members of the board of directors under RCW 48.32.050.

(d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(e) Establish regular places and times for meetings of the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under

RCW 48.32.060 subsections (1)(c) and (2)(c), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter. [1971 ex.s. c 265 § 7.]

48.32.080 Duties and powers of the commissioner. (1) The commissioner shall:

(a) Notify the association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency.

(b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may:

(a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication or in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than one hundred dollars per month.

(c) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this chapter shall be subject to judicial review in a court of competent jurisdiction. [1971 ex.s. c 265 § 8.]

48.32.090 Effect of paid claims. (1) Any person recovering under this chapter shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the

claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the right of the association against the assets of the insolvent insurer. [1971 ex.s. c 265 § 9.]

48.32.100 Nonduplication of recovery. (1) Any person having a claim against his insurer under any provision in his insurance policy which is also a covered claim shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of such recovery under the claimant's insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workmen's compensation claim, from the association of the residence of the claimant. Any recovery under this chapter shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent. [1971 ex.s. c 265 § 10.]

48.32.110 Prevention of insolvencies. To aid in the detection and prevention of insurer insolvencies:

(1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (3) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause

to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner. [1971 ex.s. c 265 § 11.]

48.32.120 Examination of the association. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30th of each year, a financial report for the preceding calendar year in a form approved by the commissioner. [1971 ex.s. c 265 § 12.]

48.32.130 Tax exemption. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property. [1971 ex.s. c 265 § 13.]

48.32.140 Recognition of assessments in rates. The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer. [1971 ex.s. c 265 § 14.]

48.32.150 Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this chapter. [1971 ex.s. c 265 § 15.]

48.32.160 Stay of proceedings. All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed for sixty days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. [1971 ex.s. c 265 § 16.]

48.32.170 Termination, distribution of fund. (1) The commissioner shall by order terminate the operation of the Washington insurers insolvency pool as to any kind of insurance afforded by property or casualty insurance

policies with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which:

(a) Is a permanent plan which is adequately funded or for which adequate funding is provided; and

(b) Extends, or will extend to state policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to such policyholders and residents than the protection and benefits provided with respect to such kind of insurance under this chapter.

(2) The commissioner shall by the same such order authorize discontinuance of future payments by insurers to the Washington insurers insolvency pool with respect to the same kinds of insurance: *Provided*, That assessments and payments shall continue, as necessary, to liquidate covered claims of insurers adjudged insolvent prior to said order and the related expenses not covered by such other plan.

(3) In the event the operation of any account of the Washington insurers insolvency pool shall be so terminated as to all kinds of insurance otherwise within its scope, the pool as soon as possible thereafter shall distribute the balance of the moneys and assets remaining in said account (after discharge of the functions of the pool with respect to prior insurer insolvencies not covered by such other plan, together with related expenses) to the insurers which are then writing in this state policies of the kinds of insurance covered by such account, and which had made payments into such account, pro rata upon the basis of the aggregate of such payments made by the respective insurers to such account during the period of five years next preceding the date of such order. Upon completion of such distribution with respect to all of the accounts specified in RCW 48.32.060, this chapter shall be deemed to have expired. [1971 ex.s. c 265 § 17.]

48.32.900 Short title. This chapter shall be known and may be cited as the Washington Insurance Guaranty Association Act. [1971 ex.s. c 265 § 18.]

48.32.910 Construction—1971 ex.s. c 265. This chapter shall be liberally construed to effect the purpose under RCW 48.32.010 which shall constitute an aid and guide to interpretation. [1971 ex.s. c 265 § 19.]

48.32.920 Section headings not part of law. Section headings as used in this chapter do not constitute any part of the law. [1971 ex.s. c 265 § 22.]

48.32.930 Severability—1971 ex.s. 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 provisions to other persons or circumstances is not affected. [1971 ex.s. c 265 § 23.]

Chapter 48.32A
WASHINGTON LIFE AND DISABILITY
INSURANCE GUARANTY ASSOCIATION ACT

Sections

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48.32A.010 Purpose. The purpose of this chapter is the creation of funds arising from assessments upon all insurers authorized to transact life or disability insurance business in the state of Washington, to be used to assure to the extent prescribed herein the performance of the insurance contractual obligations of insurers becoming insolvent to residents of this state and, in the case of domestic insurers, to residents of other jurisdictions as well; and to promote thereby the stability of domestic insurers. In the judgment of the legislature, the foregoing purpose not being capable of accomplishment by a corporation created under general laws, the creation of the nonprofit association hereinafter in this chapter described is deemed essential for the protection of the general welfare. [1971 ex.s. c 259 § 1.]

48.32A.020 Scope, personal insurances. This chapter shall apply as follows to life insurance policies, disability insurance policies, and annuity contracts of liquidating insurers, other than separate account variable policies and contracts authorized by chapter 48.18A RCW:

(1) To all such policies and contracts of a domestic insurer, without regard to the place of residence or domicile of the policy or contract owner, insured, annuitant, beneficiary, or payee.

(2) To all such policies and contracts of a foreign or alien insurer authorized to transact such insurance or annuity business in this state at the time such policies or contracts were issued or at the time of entry of the order of liquidation of the insolvent insurer, and of which the policy or contract owner, insured, annuitant, beneficiary, or payee is a resident of and domiciled within this state. With respect to group policies or group contracts of such foreign or alien insurers, this chapter shall apply only as to the insurance or annuities thereunder of individuals who are residents of and domiciled within this state. The place of residence or domicile shall be determined as of the date of entry of the order of liquidation against the insurer.

(3) To policies and contracts only of insolvent insurers with respect to which an order of liquidation is entered after May 21, 1971.

(4) The obligations of the association created under this chapter shall apply only as to contractual obligations of the insurer under insurance policies and annuity contracts, and shall be no greater than such obligations of the insolvent insurer at the time of entry of the order of liquidation; except, that the association shall have no liability with respect to any portions of such policies or contracts to the extent that the death benefit coverage on any one life exceeds an aggregate of three hundred thousand dollars.

(5) This chapter shall not apply to fraternal benefit societies, health care service contractors, or to insurance or liability assumed by the liquidating insurer under a contract of reinsurance other than of bulk reinsurance. [1971 ex.s. c 259 § 2.]

48.32A.030 Definitions. Within the meaning of this chapter:

(1) "Association" means "the Washington life and disability insurance guaranty association".

(2) "Board" means the board of directors of the Washington life and disability insurance guaranty association.

(3) "Commissioner" means the insurance commissioner of this state.

(4) "Policies" means life or disability insurance policies; "contracts" means annuity contracts and contracts supplemental to such insurance policies and annuity contracts.

(5) "Liquidating insurer" means an insurer with respect to which an order of liquidation has been entered by a court of competent jurisdiction.

(6) "Fund" means a guaranty fund provided for in RCW 48.32A.080.

(7) "Account" means any one of the three guaranty fund accounts created under RCW 48.32A.080(1).

(8) "Assessment" means a charge made upon an insurer by the board under this chapter for payment into a guaranty fund. The charge shall constitute a legal liability of the insurer so assessed.

(9) "Contributor" means an insurer which has paid an assessment.

(10) "Certificate" means a certificate of contribution provided for in RCW 48.32A.090. [1971 ex.s. c 259 § 3.]

48.32A.040 Guaranty association created. (1) There is hereby created a nonprofit unincorporated legal entity to be known as the Washington life and disability insurance guaranty association, which shall be composed of the commissioner, ex officio, and of each insurer authorized to transact life insurance, or disability insurance, or annuity business in this state. All such insurers shall be and remain members of the association during the continuance of, and as a condition to, their authority to transact such business in this state.

(2) The association shall be managed by a board of directors composed of the commissioner, ex officio, and of not less than five nor more than nine member insurers, each of whom shall initially be appointed by the commissioner to serve for terms of one, two, or three years. After the initial board is appointed, the board

shall provide in its bylaws for selection of board members by member insurers subject to the commissioner's approval; members so selected shall serve for three year terms, acceding to office upon expiration of the terms of the respective initial board members; and board members shall thereafter serve for three year terms and shall continue in office until their respective successors be selected, approved, and have qualified. At least a majority of the members of the board shall be domestic insurers. In case of a vacancy for any reason on the initial board appointed, the commissioner shall appoint a member insurer to fill the unexpired term; vacancies on the board thereafter shall be filled in the same manner as in the original selection and approval. Board members may be reimbursed for reasonable and necessary expenses incurred in connection with the performance of their duties.

(3) A director, officer, employee, agent or other representative of the association or of a member insurer, or the commissioner or his representative shall in no event be individually liable to any person, including the association, for any act or omission to act, or for any liability incurred or assumed, on behalf of the association or by virtue thereof, any such liability so incurred or assumed to be collectible only out of a fund; nor shall any insurer member of the association be subject to any liability except for assessment as in this chapter provided.

(4) The association shall be under the immediate supervision of the commissioner and shall be subject to such provisions of the insurance code of the state of Washington as may be applicable and not inconsistent with the provisions of this chapter.

(5) The board may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies. [1971 ex.s. c 259 § 4.]

48.32A.050 Powers of the association. The association shall have the power:

(1) To use a seal, to contract, to sue and be sued and, in addition, possess and exercise all powers necessary or convenient for the purposes of this chapter.

(2) With the approval of the commissioner and as provided in RCW 48.32A.060, to assume, reinsure or guarantee or cause to be assumed, reinsured, or guaranteed, partially or wholly, any or all of the policies or contracts of any liquidating domestic life or disability insurer or any policy or contract to which this chapter applies, and to make available from a fund, the creation of which is hereinafter in RCW 48.32A.080 provided, such sum or sums as may be necessary for such purpose.

(3) To carry out the provisions of this section, the association shall have, and may exercise, all necessary rights, powers, privileges, and franchises of a domestic insurer, except that it shall not be authorized to issue contracts or policies unless such contracts or policies are pursuant to contracts and policies representing obligations in whole or in part of the liquidating insurer or of the association.

(4) To borrow money for the purposes of the fund, either with or without security, and pledge such assets

in a fund as security for such loans, and in connection therewith, rehypothecate any securities or collateral pledged to it by an insurer. Any notes or other evidence of indebtedness of the association shall be legal investments for domestic insurers and may be carried as admitted assets.

(5) To collect or enforce by legal proceedings, if necessary, the payment of all assessments for which any insurer may be liable under this chapter; and to collect any other debt or obligation due to the association or a fund created in this chapter.

(6) To make bylaws and regulations for the conduct of the affairs of the association, not inconsistent with this chapter. [1971 ex.s. c 259 § 5.]

48.32A.060 Reinsurance, guaranty of policies, contracts. (1) The association shall, subject to such terms and conditions as it may impose with the approval of the commissioner, assume, reinsure, or guarantee the performance of the policies and contracts of any domestic life or disability insurer with respect to which an order of liquidation has been entered by any court of general jurisdiction in the state of Washington, and shall have power to receive, own, and administer any assets acquired in connection with such assumption, reinsurance, or guaranty. The association, as to any such policy or contract under which there is no default in payment of premiums subsequent to such assumption, reinsurance, or guaranty, shall make or cause to be made prompt payment of the benefits due under the terms of the policy or contract.

(2) The association shall make or cause to be made payment of the death, endowment, or disability insurance or annuity benefits due under the terms of each policy or contract insuring the life or health of, or providing annuity or other benefits for, a resident of this state which was issued or assumed by a foreign or alien insurer with respect to which an order of liquidation has been entered by a court of competent jurisdiction in the state or country of its domicile.

(3) In determining benefits to be paid with respect to the policies and contracts of a particular liquidating insurer the board may give due consideration to amounts reasonably recoverable or deductible because of the contingent liability, if any, of policyholders of the insurer (if a mutual insurer) or recoverable because of the assessment liability, if any, of the insurer's stockholders (if a stock insurer).

(4) With respect to an insolvent domestic insurer, the board shall have power to petition the court in which the delinquency proceedings are pending for, and the court shall have authority to order and effectuate, such modifications in the terms, benefits, values, and premiums thereafter to be in effect of policies and contracts of the insurer as may reasonably be necessary to effect a bulk reinsurance of such policies and contract in a solvent insurer.

(5) In addition to any other rights of the association acquired by assignment or otherwise, the association shall be subrogated to the rights of any person entitled to receive benefits under this chapter against the liquidating insurer, or the receiver, rehabilitator, liquidator, or

conservator, as the case may be, under the policy or contract with respect to which a payment is made or guaranteed, or obligation assumed by the association pursuant to this section, and the association may require an assignment to it of such rights by any such persons as a condition precedent to the receipt by such person of payment of any benefits under this chapter.

(6) For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the liquidating insurer to the extent of assets attributable to covered policies and contracts reduced by any amounts to which the association is entitled as a subrogee. All assets of the liquidating insurer attributable to covered policies and contracts shall be used to continue all covered policies and contracts and pay all contractual obligations of the liquidating insurer as required by this chapter. Assets attributable to covered policies and contracts, as used in this subsection, are those in that proportion of the assets which the reserves that should have been established for such policies and contracts bear to the reserves that should have been established for all insurances written by the liquidating insurer. [1971 ex.s. c 259 § 6.]

48.32A.070 Duplication of benefits prohibited.

Whenever a guaranty or payment of proceeds or benefits of a policy or contract otherwise provided for under this chapter is also provided for by a similar law of another jurisdiction, there shall be only one recovery of values or benefits, and the association or their entity established by such law in the domiciliary jurisdiction or state of entry of the liquidating insurer shall be solely responsible for such guaranty and payment. [1971 ex.s. c 259 § 7.]

48.32A.080 Guaranty funds. (1) For purposes of administration and assessment, the association shall establish and maintain three guaranty fund accounts: (a) the life insurance account; (b) the disability insurance account; and (c) the annuity account.

(2) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessment after thirty days written notice to the member insurers before payment is due.

(3) (a) The amount of any assessment for each account shall be determined by the board, and shall be divided among the accounts in the proportion that the premiums received by the liquidating insurer on the policies or contracts covered by each account bears to the premiums received by such insurer on all covered policies and contracts.

(b) Assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account bears to such premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to a particular liquidating

insurer shall not be made until necessary, in the board's opinion, to implement the purposes of this chapter; and in no event shall such an assessment be made with respect to such insurer until an order of liquidation has been entered against the insurer by a court of competent jurisdiction of the insurer's state or country of domicile. Computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determination may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed two percent of such insurer's premiums in this state on the policies or contracts covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4) of this section, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in an account, does not provide in any one year an amount sufficient to carry out the responsibilities of the association with respect to such account, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

(6) The amount in a fund shall be kept at such a sum as in the opinion of the board will enable the association to meet the immediate obligations and liabilities of such fund. Whenever in the opinion of the board the amount in a fund is in excess of such immediate obligations and liabilities, with the approval of the commissioner the association may distribute such excess by retirement of certificates previously issued against the fund. Such distribution shall be made pro rata upon the basis of outstanding certificates, except that by unanimous consent of all directors and with the approval of the commissioner any other reasonable method of retirement of such certificates may be adopted.

(7) As used in this section, "premiums" are those for the calendar year preceding the entry of the order of liquidation as to a particular liquidating insurer, and shall be direct gross insurance premiums and annuity considerations received on policies and contracts to which this chapter applies, less return premiums and considerations and less dividends paid or credited to policyholders.

(8) Upon dissolution of a fund by the repeal of this chapter or otherwise, the fund shall be distributed in the same manner as is provided for the repayment or retirement of certificates. If the amount in the fund at the time of dissolution is in excess of outstanding certificates issued against the fund, such excess shall be distributed among contributing member insurers in such equitable manner as is approved by the commissioner. [1971 ex.s. c 259 § 8.]

48.32A.090 Certificates of contribution; allowance as asset. (1) The association shall issue to each insurer paying an assessment under this chapter certificates of contribution, in appropriate form and terms as prescribed or approved by the commissioner, for the amounts so paid into the respective funds. All outstanding certificates against a particular fund shall be of equal dignity and priority without reference to amounts or dates of issue.

(2) An outstanding certificate of contributions shall be shown by the insurer in its financial statements as an admitted asset for such amount and period of time as the commissioner may approve: *Provided*, That unless a longer period has been allowed by the commissioner the insurer shall in any event at its option have the right to so show a certificate of contribution as an admitted asset at percentages of original face amount for calendar years as follows:

100% for the calendar year of issuance;

80% for the first calendar year after the year of issuance;

60% for the second calendar year after the year of issuance;

40% for the third calendar year after the year of issuance;

20% for the fourth calendar year after the year of issuance; and

0% for the fifth and subsequent calendar years after the year of issuance.

(3) No distribution to stockholders, if any, of a liquidating insurer shall be made unless and until the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association. [1971 ex.s. c 259 § 9.]

48.32A.100 Taxation. (1) The association shall be exempt from premium tax. Any domestic insurer whose policies or contracts have been assumed, reinsured, or guaranteed by the association under this chapter shall remain liable for premium taxes on all premiums received on policies and contracts issued by it, but payment of such taxes shall be suspended. Payment of or on account of such taxes shall be made under such terms and conditions as the commissioner may prescribe. No distribution to stockholders, if any, of the liquidating insurer shall be made unless all premium taxes, the payment of which has been suspended hereunder, have been fully paid.

(2) The association shall be exempt from all taxes and fees now or hereafter imposed by the state of Washington or by any county, municipality, or local authority or subdivision; except that any real property owned by the association shall be subject to taxation to the same extent according to its value as other real property is taxed.

(3) Assessments made upon domestic insurers pursuant to a law of another jurisdiction similar to this chapter, shall be excluded from the application of RCW 48.14.040 (retaliatory provision). [1971 ex.s. c 259 § 10.]

48.32A.110 Prohibited use of chapter. No person shall make use in any manner of the protection afforded under this chapter in the solicitation of insurance or annuity business. [1971 ex.s. c 259 § 11.]

48.32A.120 Recapture of excessive dividends to affiliates. (1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed or existing under such order shall have a right to recover, and upon request of the board or without such request shall take such action as he deems advisable to recover, on behalf of the insurer from any affiliate that controlled it the amount of distributions, other than stock dividends paid by the insurer on its capital stock, at any time during the five years preceding the petition for liquidation or rehabilitation of the insurer subject to the limitations of subsections (2) through (4) of this section.

(2) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate in control of the insurer at the time a distribution was paid shall be liable up to the amount of distribution he received. Any person who was an affiliate in control of the insurer at the time a distribution was declared shall be liable up to the amount of distribution he would have received if it had been paid immediately. If two persons are liable with respect to the same distribution they shall be jointly and severally liable.

(4) The maximum amount recoverable by the receiver under this section shall be the amount needed in excess of all other available assets to pay the contractual obligations of the insurer.

(5) If any person liable under subsection (3) of this section is insolvent, all its affiliates that controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate. [1971 ex.s. c 259 § 12.]

48.32A.900 Short title. This chapter shall be known and may be cited as the Washington Life and Disability Insurance Guaranty Association Act. [1971 ex.s. c 259 § 13.]

48.32A.910 Construction—1971 ex.s. c 259. This chapter shall be liberally construed to effect the purpose stated in RCW 48.32A.010, which shall constitute an aid and guide to interpretation. [1971 ex.s. c 259 § 14.]

48.32A.920 Section headings not part of law. Section headings in this chapter do not constitute any part of the law. [1971 ex.s. c 259 § 15.]

48.32A.930 Severability—1971 ex.s. c 259. If any clause, sentence, paragraph, section or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall

not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment has been rendered. [1971 ex.s. c 259 § 17.]

Chapter 48.34
CREDIT LIFE INSURANCE AND CREDIT
ACCIDENT AND HEALTH INSURANCE

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48.34.010 Declaration of purpose—Liberal construction. The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit accident and health insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. The provisions of this chapter shall be liberally construed. [1961 c 219 § 1.]

48.34.020 Chapter part of insurance code—What insurance subject to chapter. (1) This chapter is a part of the insurance code.

(2) All life insurance and all accident and health insurance in connection with loans or other credit transactions shall be subject to the provisions of this chapter, except such insurance under an individual policy in connection with a loan or other credit transaction of more than ten years duration. Insurance shall not be subject to the provisions of this chapter where its issuance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor. [1969 ex.s. c 241 § 14; 1961 c 219 § 2.]

48.34.030 Definitions. For the purpose of this chapter: (1) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction;

(2) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy;

(3) "Creditor" means the lender of money or vendor or lessor of goods, services, properties, rights, or privileges, for which payment is arranged through a credit

transaction, or any successor to the right, title, or interest of any such lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them or a director, officer, or employee of any of them or any other person in any way associated with any of them;

(4) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, properties, rights, or privileges for which payment is arranged through a credit transaction;

(5) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with the loan or other credit transaction. [1961 c 219 § 3.]

48.34.040 Authorized forms. Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

(1) Individual policies of life insurance issued to debtors on the term plan;

(2) Individual policies of accident and health insurance issued to debtors on a term plan, or disability benefit provisions in individual policies of credit life insurance;

(3) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

(4) Group policies of accident and health insurance issued to creditors on a term plan insuring debtors, or disability benefit provisions in group credit life insurance policies to provide such coverage. [1961 c 219 § 4.]

48.34.050 Life—Limitation on amount under individual policy. The initial amount of credit life insurance under an individual policy shall not exceed the total amount repayable under the contract of indebtedness. Where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. [1961 c 219 § 5.]

48.34.060 Life—Limitation on amount under group policy—Exceptions. The initial amount of credit life insurance under a group policy shall at no time exceed the amount owed by the debtor which is repayable in installments to the creditor, or twelve thousand five hundred dollars, whichever is less. Nor shall the amount repayable under the contract of indebtedness extend over a period in excess of seven years, except that in case of long term agricultural real estate mortgages or agricultural short term crop production loans, the amount of insurance on the life of the debtor shall at no time exceed the amount owed by him to the creditor or twenty-five thousand dollars, whichever is less. [1967 ex.s. c 82 § 1; 1961 c 219 § 6.]

48.34.070 Accident and health—Limitation on amount. The total amount of periodic indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness; and the amount of such periodic indemnity payment shall not exceed the

original indebtedness divided by the number of periodic installments. [1961 c 219 § 7.]

48.34.080 Commencement, termination date of term.

The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor: *Provided*, That, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and such evidence is furnished more than thirty days after the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than fifteen days beyond the scheduled maturity date of indebtedness, except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in RCW 48.34.110. [1961 c 219 § 8.]

48.34.090 Policy or certificate—Contents—Delivery, copy of application or notice in lieu—Substitute insurer, premium, etc., on rejection. (1) All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor.

(2) Each individual policy or group certificate of credit life insurance, and/or credit accident and health insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurer, the name or names of the debtor or in the case of a certificate under a group policy, the identity by name or otherwise of the debtor, the premium or amount of payment, if any, by the debtor separately for credit life insurance and credit accident and health insurance, a description of the coverage including the amount and term thereof, and any exceptions, limitations and restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance exceeds the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

(3) The individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred except as provided in subsections (4) and (5).

(4) If such individual policy or group certificate of insurance is not delivered to the debtor at the time the

indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer; the name or names of the debtor; the premium or amount of payment by the debtor, if any, separately for credit life insurance and credit accident and health insurance; the amount, term and a brief description of the coverage provided, shall be delivered to the debtor at the time such indebtedness is incurred. The copy of the application for, or notice of proposed insurance, shall also refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale or other credit statement of account, instrument, or agreement, or the application for any such loan, sale or credit, unless the information required by this subsection is prominently set forth therein under a descriptive heading which shall be underlined and printed in capital letters. Upon acceptance of the insurance by the insurer and within thirty days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as provided in RCW 48.34.080.

(5) If the named insurer does not accept the risk, then the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged, and if the amount of premium is less than that set forth in the notice of proposed insurance an appropriate refund shall be made. [1961 c 219 § 9.]

48.34.100 Filing policies, notices, riders, etc.—Approval by commissioner—Preexisting policies—Forms. (1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the commissioner.

(2) No such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, or riders shall be used in this state until approved by the commissioner pursuant to RCW 48.18.100 and RCW 48.18.110. In addition to any grounds for disapproval provided therein, the form shall be disapproved both as to credit life and credit accident and health insurance if the benefits provided therein are not reasonable in relation to the premium charged.

(3) If a group policy of credit life insurance or credit accident and health insurance has been delivered in this state before midnight, June 7, 1961, on the first anniversary date following such time the terms of the policy as they apply to persons newly insured thereafter shall be rewritten to conform with the provisions of this chapter.

(4) If a group policy has been or is delivered in another state before or after August 11, 1969, the forms to be filed by the insurer with the commissioner are the group certificates and notices of proposed insurance delivered or issued for delivery in this state. He shall approve them if:

(a) They provide the information that would be required if the group policy was delivered in this state; and

(b) The applicable premium rates or charges do not exceed those established by his rules or regulations. [1969 ex.s. c 241 § 15; 1961 c 219 § 10.]

48.34.110 Refunds—Credits—Charges to debtor.

(1) Each individual policy, or group certificate shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto. The formula to be used in computing such refund shall be filed with and approved by the commissioner.

(2) If a creditor requires a debtor to make any payment for credit life insurance or credit accident and health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.

(3) The amount charged to a debtor for any credit life or credit accident and health insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined. [1961 c 219 § 11.]

48.34.120 Debtor's right to furnish and obtain own insurance. When the credit life insurance or credit accident and health insurance is required in connection with any credit transaction, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this state. [1961 c 219 § 12.]

48.34.900 Severability—1961 c 219. If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the chapter and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected thereby. [1961 c 219 § 13.]

48.34.910 Small loan act not affected. Nothing in this chapter shall be construed to permit any practice prohibited by chapter 31.08 RCW, nor is it intended that this chapter shall amend or repeal any provision of chapter 31.08 RCW, known as the "Small Loan Act". [1961 c 219 § 14.]

Chapter 48.36 FRATERNAL

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Reviser's note: The bulk of this chapter was originally enacted by 1911 c 49 §§ 206–237; RRS §§ 7259–7292.

Fraternal societies, general laws governing: Chapter 24.20 RCW.

Fraudulent use of name of secret society: RCW 9.37.050.

Granges: Chapter 24.28 RCW.

Washington Nonprofit Corporation Act: Chapter 24.03 RCW.

48.36.010 Fraternal benefit society defined. Any corporation, society, order, or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provision for the payment of benefits in accordance with RCW 48.36.050 hereof, is hereby declared to be a fraternal benefit society. [1947 c 79 § .32.01; Rem. Supp. 1947 § 45.32.01.]

48.36.020 Lodge system defined. Any society having a supreme governing or a legislative body and subordinate lodges or branches by whatever name known, into which members shall be elected, initiated, and admitted in accordance with its constitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such societies to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system. [1947 c 79 § .32.02; Rem. Supp. 1947 § 45.32.02.]

48.36.030 Representative form of government defined. Any such society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws: *Provided*, That the elective members shall constitute a majority in the number and have not less than two-thirds of the votes, nor less than the votes required to amend its constitution and laws: *Provided further*, That the meetings of the supreme or governing body, and the election of officers, representatives, or delegates shall be held as often as once in four years. The members, officers, representatives, or delegates of a fraternal benefit society shall not vote by proxy. [1947 c 79 § .32.03; Rem. Supp. 1947 § 45.32.03.]

48.36.040 Exemptions. Except as herein provided, such societies shall be governed by the provisions of this chapter and shall be exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them unless they be expressly designated therein. [1947 c 79 § .32.04; Rem. Supp. 1947 § 45.32.04.]

48.36.050 Benefits. (1) Every society transacting business under this chapter shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident or old age: *Provided*, That the period of life at which the payment of benefits for disability on account of old age shall commence, shall not be under seventy years, and may provide for monuments or tombstones to the memory of the deceased members and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all or such portion of the face value of his certificates as the laws of the society may provide: *Provided*, That nothing in this chapter contained shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life which are payable upon the death or disability of the member occurring within the terms for which the benefit certificates may be issued. Such society shall, upon written application of the members, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contributions, against the certificate with interest payable or compounded annually at a rate not lower than four percent per annum: *Provided*, That this privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contribution and to contracts affected by such readjustment.

(2) Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve necessary to enable it to do

so, under a table of mortality not lower than the American Experience Table and four percent interest, may grant to its members, extended and paid-up protection or such withdrawal equities as its constitution and laws may provide: *Provided*, That such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made.

(3) Power and authority is hereby given to a society to divide its membership into separate classes, each class having a separate form of contract of similar or general plan and character in its purpose, and that the assets or mortuary collections made from the members of each class respectively shall be carried and maintained separate for such class, and that the required reserve accumulation of such class, if the contract therefor provides for such fund, shall be set apart and held specifically and separately for the use and benefit of such particular class, and shall not thereafter be mingled with the assets or mortuary collections of any other class of the society. [1947 c 79 § .32.05; Rem. Supp. 1947 § 45.32.05.]

48.36.060 Beneficiaries. Each member shall have the right to designate his beneficiary, and, from time to time, have the same changed in accordance with the laws, rules, or regulations of the society, and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of the said member: *Provided*, That any society may, by its laws, limit the scope of beneficiaries within designated classes. [1949 c 190 § 29; 1947 c 79 § .32.06; Rem. Supp. 1949 § 45.32.06.]

48.36.070 Qualifications for membership. (1) Any society may admit to beneficial membership any person not less than fifteen years of age, who has been examined by a legally qualified physician, and whose examination has been supervised and approved in accordance with the laws of the society, or who has made a declaration of insurability acceptable to the society: *Provided*, That any beneficial member of a society who shall apply for additional benefits more than six months after becoming a beneficial member shall pass an additional medical examination, or make an additional declaration of insurability, as required by the society.

(2) Any person so admitted prior to attaining the full age of twenty-one years shall be bound by the terms of his or her application and certificate, and by all the laws, rules and regulations of the society, and shall be entitled to all the rights and privileges of membership therein, as fully and to the same extent as though he or she were a person of full legal age, and may at any time surrender his or her membership and insurance or give a valid discharge for any benefit accruing or any money payable thereunder.

(3) Nothing herein contained shall prevent such society from accepting general or social members, who shall have no voice or vote in the management of the insurance affairs of the society, nor from issuing juvenile certificates on the lives of children under the age of eighteen years. [1955 c 303 § 25; 1953 c 197 § 14; 1949

c 190 § 30; 1947 c 79 § .32.07; Rem. Supp. 1949 § 45.32.07.]

48.36.080 Certificate. Every certificate issued by any such society shall specify the amount of benefit provided thereby and the plan of insurance upon which it is written and shall provide that the certificate, the charter or articles of incorporation, or if a voluntary association, the articles of association, the constitution and laws of the society, and the application for membership signed by the applicant, and all amendments to each thereof shall constitute the agreement between the society and the member, and copies of the same certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof, and any changes, additions or amendments to said charter or articles of incorporation, or articles of association if a voluntary association, constitution or laws duly made or enacted subsequent to the issuance of the benefit certificates, shall bind the member and his beneficiaries and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership. [1947 c 79 § .32.08; Rem. Supp. 1947 § 45.32.08.]

48.36.090 Funds. (1) Any society may create, maintain, invest, disburse, and apply an emergency, surplus or other similar fund in accordance with its law. Unless otherwise provided in the contract, such funds shall be held, invested, and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in RCW 48.36.050. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed, shall be derived from periodical or other payments by the members of the society and accretions of said funds: *Provided*, That no society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this state, which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard with interest assumption not more than four percent per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four percent per annum.

(2) Deferred payments or installments of claims shall be considered as fixed liabilities on the happening of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall

maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities. [1947 c 79 § .32.09; Rem. Supp. 1947 § 45.32.09.]

48.36.100 Investments. Every society shall invest its funds only in securities permitted by the laws of this state for the investment of the assets of life insurance companies: *Provided*, That any foreign society permitted or seeking to do business in this state, which invests its funds in accordance with the laws of the state in which it is incorporated, shall be held to meet the requirements of this chapter for the investment of funds. [1947 c 79 § .32.10; Rem. Supp. 1947 § 45.32.10.]

48.36.120 Organization. Seven or more persons, citizens of the United States, and a majority of whom are citizens of this state, who desire to form a fraternal benefit society, as defined by this chapter, may make and sign, giving their addresses, and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

First.—The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or to lead to confusion.

Second.—The purpose for which it is formed, which shall not include more liberal powers than are granted in this chapter: *Provided*, That any lawful social, intellectual, educational, charitable, benevolent, moral, or religious advantages may be set forth among the purposes of the society, and the mode in which its corporate powers are to be exercised.

Third.—The names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of issuance of the permanent certificate. Such articles of incorporation and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of five thousand dollars, with sureties approved by the commissioner, conditioned upon the return of the advanced payments, as provided in this section, to applicants, if the organization is not completed within one year, shall be filed with the commissioner, who may require such further information as he deems necessary, and if the purposes of the society conform to the requirements of this chapter, and all provisions of law have been complied with, the commissioner shall so certify and retain and record, or file, the articles of incorporation, and furnish the incorporators a preliminary certificate authorizing said society to solicit members as hereinafter provided.

Upon receipt of said certificate from the commissioner, said society may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant, a receipt for the amount so collected. But no such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate, nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such society, nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated, nor until there has been submitted to the commissioner, under oath of the president and secretary, or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions which shall be sufficient to provide for meeting the mortuary obligation contracted, when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four percent per annum, nor until it shall be shown to the commissioner by the sworn statement of the treasurer, or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly payment as herein provided per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars, all of which shall be credited to the mortuary or disability fund on account of such applicants, and no part of which may be used for expenses.

Said advanced payments shall, during the period of organization, be held in trust, and, if the organization is not completed within one year as hereinafter provided, returned to said applicants.

The commissioner may make such examination and require such further information as he deems advisable, and upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate. The commissioner shall cause a record of such certificate to be made and a certified copy of such record

may be given in evidence with like effect as the original certificate.

No preliminary certificate granted under the provisions of this section shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the commissioner, upon cause shown, unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided, and the articles of incorporation and all proceedings thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such society shall have completed its organization and commenced business as herein provided. When any domestic society shall have discontinued business for the period of one year, or has less than four hundred members, its charter shall become null and void.

Every society shall have the power to make a constitution and bylaws for the government of the society, the admission of its members, the management of its affairs, and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to or amend such constitution and bylaws and shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society. [1947 c 79 § .32.12; Rem. Supp. 1947 § 45.32.12.]

48.36.130 Existing societies. Any society now engaged in transacting business in this state may exercise, after the passage of this chapter, all of the rights conferred thereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent herewith, if incorporated; or, if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided herein or in its constitution and laws and all such amendments shall be filed as original articles of incorporation are required to be filed, and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, constitution or laws. [1947 c 79 § .32.13; Rem. Supp. 1947 § 45.32.13.]

48.36.140 Mergers and transfers. No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer which shall be filed as original articles of incorporation are required to be filed, together with a sworn statement of the financial condition of each of said societies, by its president and secretary, or corresponding officers, and a certificate of such officers duly verified under oath of said officers of each of the contracting societies, that such merger or transfer has been approved by a vote of two-thirds of the members

of the supreme legislative or governing body of each of said societies.

Upon the submission of said contract, financial statements and certificates, the commissioner shall examine the same, and, if he finds such financial statements to be correct and the said contract to be in conformity with the provisions of this section, and that such merger or transfer is just and equitable to the members of each of said societies, he shall approve said merger or transfer, issue his certificate to that effect and thereupon the said contract of merger or transfer shall be of full force and effect.

In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by the commissioner. [1947 c 79 § .32.14; Rem. Supp. 1947 § 45.32.14.]

48.36.150 License. Societies which are now authorized to transact business in this state may continue such business until the first day of April next succeeding the passage of this chapter, and the authority of such societies may thereafter be renewed annually, but in all cases to determine on the first day of the succeeding April: *Provided*, That the license shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the commissioner the fee charged for a certificate of authority pursuant to RCW 48.14.010: *Provided*, That the retaliatory provisions of RCW 48.14.040 shall be applicable.

A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter. [1969 ex.s. c 241 § 16; 1947 c 79 § .32.15; Rem. Supp. 1947 § 45.32.15.]

48.36.160 Foreign societies. No foreign society now transacting business, organized prior to the passage of this chapter, which is not now authorized to transact business in this state, shall transact any business herein without a license from the commissioner. Any such society shall be entitled to a license to transact business within this state upon filing with the commissioner a duly certified copy of its charter or articles of association; a copy of its constitution and laws, certified by its secretary or corresponding officer; a power of attorney to the commissioner as hereinafter provided; a statement of its business under oath of its president and secretary, or corresponding officers, in the form required by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state satisfactory to the commissioner of this state; a certificate from the proper official in its home state, province, or country that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical, or other payments by persons holding similar contracts, and upon furnishing the commissioner such other information as he may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the state, territory, district, province, or country

where it is organized, he shall issue a license to such society to do business in this state until the first day of the succeeding April: *Provided*, That such license shall continue in full force and effect until the new license be issued or specifically refused. Any foreign society desiring admission to this state shall have the qualifications required of domestic societies organized under this chapter and have its assets invested as required by the laws of the state, territory, district, country, or province where it is organized. For each such license or renewal the society shall pay the commissioner ten dollars. When the commissioner refuses to license any society, or revokes its authority to do business in this state, he shall reduce his ruling, order or decision to writing and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers of the society, upon request, and the action of the commissioner shall be reviewable by proper proceedings in any court of competent jurisdiction within the state: *Provided*, That nothing contained in this or RCW 48.36.150 shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business herein. [1947 c 79 § .32.16; Rem. Supp. 1947 § 45.32.16.]

48.36.170 Commissioner as attorney for service of process. Every society, whether domestic or foreign, now transacting business in this state shall, within thirty days after this chapter takes effect, and every such society hereafter applying for admission, shall before being licensed, appoint in writing the commissioner and his successors in office to be its true and lawful attorney, upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this state.

Copies of such appointment, certified by said commissioner, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate upon the commissioner, in his absence upon the person in charge of his office, and shall be deemed sufficient service upon such society. The copies of legal process shall be served upon the commissioner either by a person competent to serve a summons, by registered mail or certified mail with return receipt requested. At the time of service the plaintiff shall pay to the commissioner two dollars, taxable as costs in the action: *Provided*, That no such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense in less than forty days from the date of mailing the copy of such service to such society. When legal process against any such society is served upon said commissioner, he shall forthwith forward by registered mail, one of the duplicate copies prepaid and directed to its secretary or corresponding officer. Legal process

shall not be served upon any such society except in the manner provided herein. [1963 c 195 § 22; 1947 c 79 § .32.17; Rem. Supp. 1947 § 45.32.17.]

48.36.180 Place of meeting—Principal office. Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province, or territory wherein such society has subordinate branches and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state. But its principal office shall be located in this state. [1947 c 79 § .32.18; Rem. Supp. 1947 § 45.32.18.]

48.36.190 No personal liability. Officers and members of the supreme, grand, or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society, but the same shall be payable only out of the funds of such society and in the manner provided by its laws. [1947 c 79 § .32.19; Rem. Supp. 1947 § 45.32.19.]

48.36.200 Waiver of provisions may be denied. The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members. [1947 c 79 § .32.20; Rem. Supp. 1947 § 45.32.20.]

48.36.210 Benefits immune from process. No money or other benefit, charity or relief or aid to be paid, provided, or rendered by any such society shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process, or operation of law to pay any debt or liability of a member or beneficiary or any other person who may have a right thereunder, either before or after payment. [1947 c 79 § .32.21; Rem. Supp. 1947 § 45.32.21.]

48.36.220 Filing of amendments to constitution and laws. Every society transacting business under this chapter, shall file with the commissioner a duly certified copy of all amendments of or additions to its constitution and laws, within ninety days after the enactment of the same. Printed copies of the constitution and laws as amended, changed, or added to, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof. [1947 c 79 § .32.22; Rem. Supp. 1947 § 45.32.22.]

48.36.230 Annual reports—Valuation of certificates. Every society transacting business in this state shall annually, on or before the fifteenth day of March, file with the commissioner in such form as he may require, a statement under oath of its president and secretary, or corresponding officers, of its condition and

standing on the thirty-first day of December next preceding, and of its transactions for one year ending on that date, and also shall furnish such other information as the commissioner may deem necessary to a proper exhibit of its business and plan of working. The commissioner may at other times require any further statement he may deem necessary to be made relating to such society.

In addition to the annual report herein required, each society shall annually report to the commissioner in valuation of its certificates in force on the thirty-first day of December last preceding excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses: *Provided*, That the first report of valuation shall be made as of December 31, 1931. Such report of valuation shall show, as contingent liabilities, the present midyear value of the promised benefits provided in the constitution and laws of such society under certificates then subject to valuation; and as contingent assets, the present mid-year value of the future net contributions provided in the constitution and laws as the same are in practice actually collected. At the option of any society in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years. Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the department of insurance of the home state of the society, and shall be filed with the commissioner within ninety days after the submission of the last preceding annual report. The legal minimum standard of valuation shall be according to tables of reliable experience and in such case a separation of the funds shall not be required.

The minimum standard of valuation for all certificates issued on or after June 7, 1973 shall be four percent interest and the following tables:

(a) For certificates of life insurance, American men ultimate table of mortality, with Bowerman's or Davis' extension thereof, the commissioners 1941 standard industrial mortality table, the commissioners 1961 standard industrial mortality table, the commissioners 1941 standard ordinary mortality table, or the commissioners 1958 standard ordinary mortality table using an age not more than three years younger than the actual age of the insured for female risks;

(b) For annuity certificates, including life annuities provided or available under optional modes of settlement in such certificates, the 1937 standard annuity mortality table, annuity mortality table for 1949 ultimate, or the 1971 individual annuity mortality table, or any modification of these tables approved by the commissioner;

(c) For disability benefits issued in connection with life benefit certificate, Hunter's disability table or class III disability table (1926), modified to conform to the contractual waiting period, or the tables of period 2

disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries with due regard to the type of benefit, any tables of which for active lives shall be combined with a mortality table permitted for calculating the reserves on life insurance certificates;

(d) For accidental death benefits issued in connection with life benefit certificate, the intercompany double indemnity mortality table or the 1959 accidental death benefits table combined with a mortality table permitted for calculating the reserves for life insurance certificates; and

(e) For accident and sickness benefits, the society shall maintain an active life reserve which shall place a sound value on its liabilities under such certificates and which shall not be less, in the aggregate than the reserve according to the standards set forth in the regulations issued by the commissioner and, in no event, less than the pro rata gross unearned premium reserve for such certificates.

An annual report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June 1st of each year, or, in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society. The laws of such society shall provide that if the stated periodical contributions of its members, together with the admitted assets, are insufficient to mature its certificates in full, and to provide for the creation and maintenance of the funds required by its laws, additional, increased or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five percent per annum. [1973 c 79 § 1; 1947 c 79 § .32.23; Rem. Supp. 1947 § 45.32.23.]

48.36.240 Deficiencies to be made good. If the valuation of the certificates as hereinbefore provided, on December 31, 1931, shall show that the present value of future net contributions together with the admitted assets is less than ninety percent of present value of the promised benefits and accrued liabilities, such society shall be required thereafter to reduce such deficiency not less than ten percent of the total deficiency on said December 31, 1931, at each succeeding triennial valuation. If at any succeeding triennial valuation such society does not show such percentage of improvement, the commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has not made the percentage of improvement required herein, the commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society in accordance with the provisions of RCW 48.36.250, or in

the case of a foreign society, he may cancel its license to transact business in this state.

Any such society shown by any triennial valuation subsequent to December 31, 1931, not to have made the improvements herein required, shall, within one year thereafter, complete such deficient improvement, or thereafter as to all new members admitted be subject, so far as stated rates of contributions are concerned, to the provisions of RCW 48.36.120 applicable to the organization of new societies: *Provided*, That the contributions and funds of such new members shall be kept separate and apart from the other funds of the society until the required improvement shall be shown by valuation. If such required improvement is not shown by the succeeding triennial valuation, then the said new members shall be placed in a separate class and their certificates valued as an independent society in respect to contributions and funds. [1947 c 79 § .32.24; Rem. Supp. 1947 § 45.32.24.]

48.36.250 Examination of domestic societies. The commissioner, or his deputy or examiner, shall have the power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examinations, and he or his deputy, or examiner, shall have free access to all the books, papers, and documents that relate to the business of the society and may summon and qualify as witness under oath and examine its officers, agents, and employees or other persons in relation to the affairs, transactions, and condition of the society.

The expense of such examination shall be paid by the society examined, upon statement furnished by the commissioner, and the examination shall be made at least once in three years.

Whenever after examination the commissioner is satisfied that any domestic society has failed to comply with any provisions of this chapter, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently, or whenever any domestic society, after the existence of one year or more, shall have a membership of less than four hundred, or shall determine to discontinue business, the commissioner may present the facts relating thereto to the attorney general, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, said society shall be enjoined from carrying on any further business, and the commissioner shall be appointed receiver of such society, as is provided in case of insolvency of insurance companies, and shall proceed at once to take possession of the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled thereto.

No such proceedings shall be commenced by the attorney general against any such society until, after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it,

on a date to be named in said notice, to show cause why such proceedings should not be commenced. [1947 c 79 § .32.25; Rem. Supp. 1947 § 45.32.25.]

48.36.260 Attorney general to apply for dissolution, etc. No application for injunction against or proceedings for the dissolution of or appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in this state unless the same is made by the attorney general. [1947 c 79 § .32.26; Rem. Supp. 1947 § 45.32.26.]

48.36.270 Examination of foreign societies. The commissioner, or any person whom he may appoint, may examine any foreign society transacting or applying for admission to transact business in this state. The said commissioner may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers, and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents, and employees and other persons in relation to the affairs, transactions and condition of the society. He may, in his discretion, accept in lieu of such examinations, the examination of the insurance department of the state, territory, district, province, or country where such society is organized. The actual expenses of examiners making any such examination, shall be paid by the society upon statement furnished by the commissioner.

If any such society or its officers refuses to submit to such examination or to comply with the provisions of the section relative thereto, the authority of such society to write new business in this state shall be suspended or license refused until satisfactory evidence is furnished the commissioner, relating to the condition and affairs of the society, and during such suspension the society shall not write new business in this state. [1947 c 79 § .32.27; Rem. Supp. 1947 § 45.32.27.]

48.36.280 Secrecy enjoined. Pending, during or after an examination or investigation of any such society, either domestic or foreign, the commissioner shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report, or finding affecting the status, standing, or rights of any such society, until a copy thereof shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement, report, or finding and to make such showing in connection therewith as it may desire. [1947 c 79 § .32.28; Rem. Supp. 1947 § 45.32.28.]

48.36.290 Revocation of license. When the commissioner on investigation is satisfied that any foreign society transacting business under this chapter has exceeded its powers, or has failed to comply with any provisions hereof, or is conducting business fraudulently, or is not carrying out its contracts in good faith he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction and after reasonable notice require said society on a date named to

show cause why its license should not be revoked. If on the date named in said notice such objections have not been removed to the satisfaction of the commissioner or the society does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority of the society to continue business in this state. All decisions and findings of the commissioner made under the provisions of this section may be reviewed by proper proceedings in any court of competent jurisdiction as provided in RCW 48.36.160. [1947 c 79 § .32.29; Rem. Supp. 1947 § 45.32.29.]

48.36.300 Exemption of certain societies. Nothing contained in this chapter shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows, Improved Order of Red Men, Fraternal Order of Eagles, Loyal Order of Moose, or Knights of Pythias, exclusive of the insurance department of the Supreme Lodge of Knights of Pythias, the Grand Aerie Fraternal Order of Eagles, and the Junior Order of United American Mechanics, exclusive of the beneficiary degree or insurance branch of the National Council Junior Order United American Mechanics, or societies which limit their membership to any one hazardous occupation, nor to similar societies which do not issue insurance certificates, nor to any association of local lodges of a society now doing business in this state which provides death benefits not exceeding three hundred dollars to any one person, or disability benefit not exceeding three hundred dollars in any one year to any one person, or both, nor to any contracts of reinsurance business on such plan in this state, nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year: *Provided*, That any such domestic order or society which has more than five hundred members, and provides for death or disability benefits, and any such domestic lodge, order, or society which issues to any person a certificate providing for the payment of benefits, shall not be exempt by the provisions of this section, but shall comply with all the requirements of this chapter. The commissioner may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this chapter.

No society, which is exempt by the provisions of this section from the requirements of this chapter shall give or allow or promise to give or allow to any person any compensation for procuring new members.

Any fraternal benefit society, heretofore organized and incorporated and operating within the definition set forth in RCW 48.36.010, 48.36.020, and 48.36.030, providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate

itself to pay death or sick benefits, may be licensed under the provisions hereof, and shall have all the privileges and shall be subject to all the provisions and regulations of this chapter, except that the provisions of this chapter requiring medical examinations, valuations of benefit certificates, and that the certificate shall specify the amount of benefits, shall not apply to such society. [1947 c 79 § .32.30; Rem. Supp. 1947 § 45.32.30.]

48.36.310 Veterans' societies. Any corporation, society, order or voluntary association operating within the definition set forth in RCW 48.36.010, 48.36.020, and 48.36.030, organized during the war in which the United States entered on April 6, 1917, with the purposes of assisting the government of the United States in maintaining and increasing the production of commodities essential for the prosecution of that war, and of developing loyalty to the United States, or whose membership is limited to veterans of that war, may be licensed under the provisions hereof and shall have all the privileges and shall be subject to all the provisions and regulations of this chapter, except that the provisions of this chapter requiring death benefits of at least one thousand dollars, medical examinations, valuations of benefit certificates, shall not apply to such society, but such society may provide benefits in case of death or disability resulting solely from accidents in an amount not exceeding one thousand dollars and may also provide for death or funeral benefits, or both, not exceeding one hundred dollars each, and for sick or disability benefits not exceeding five hundred dollars to any one person, in any one year. Any corporation, society, order, or voluntary association organized under the provisions of this section shall file with the insurance commissioner a copy of all its rates and policy forms, which rates and policy forms must be approved by the said insurance commissioner before becoming effective; and all such rates and forms shall be observed by said society until amended rates or forms shall have been filed with and approved by the said insurance commissioner. [1947 c 79 § .32.31; Rem. Supp. 1947 § 45.32.31.]

48.36.320 Taxation. Every fraternal benefit society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal, and school tax, other than taxes on real estate and office equipment. [1947 c 79 § .32.32; Rem. Supp. 1947 § 45.32.32.]

48.36.330 Penalties. Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do business in this state, or who shall solicit membership for, or in any manner assist in procuring membership in any such society not authorized as herein provided, to do business as herein defined in this state, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars.

Any society, or any officer, agent, or employee thereof neglecting or refusing to comply with, or violating

any of the provisions of this chapter, the penalty for which neglect, refusal, or violation is not specified in this section shall be fined not exceeding two hundred dollars upon conviction thereof. [1947 c 79 § .32.33; Rem. Supp. 1947 § 45.32.33.]

48.36.340 Assignment of certificates—Payment discharges society. RCW 48.18.360 and 48.18.370 shall be applicable to fraternal benefit societies, as though such societies were "insurers" as such term is used in such sections, and to the certificates providing death benefits or disability benefits issued by such societies. [1947 c 79 § .32.34; Rem. Supp. 1947 § 45.32.34.]

48.36.350 Juvenile benefits. Any fraternal benefit society operating on the lodge system and authorized to transact the business of fraternal insurance in this state, may provide in its constitution and bylaws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of one and eighteen years at next birthday. Any such society may at its option organize and operate branches for such children and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. [1955 c 303 § 27; 1949 c 190 § 31; 1947 c 79 § .32.35; Rem. Supp. 1949 § 45.32.35.]

48.36.370 Required reserves—Exchange for adult certificate. Any society entering into such insurance agreements shall maintain in all such contracts the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in RCW 48.36.360: *Provided*, That a society may provide that when a child reaches the minimum age for initiation into membership in such society, any benefit certificate issued hereunder may be surrendered for cancellation and exchanged for any other forms of certificate issued by the society. Upon the issuance of such new certificate, any reserve upon the original certificate herein provided for shall be transferred to the credit of the new certificate. Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contribution, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate to be left to the child so admitted to benefit membership. [1947 c 79 § .32.37; Rem. Supp. 1947 § 45.32.37.]

Reviser's note: RCW 48.36.360 was repealed by 1973 c 79 § 2.

48.36.380 Report of juvenile insurance. A statement of all business transacted on account of juvenile benefit insurance shall be included by any society in its annual report to the commissioner. [1953 c 197 § 16; 1947 c 79 § .32.38; Rem. Supp. 1947 § 45.32.38.]

48.36.390 Separate expense fund. Any society shall have the right to provide in its laws and the certificates issued hereunder for specified payments on account of

the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and bylaws may provide. [1947 c 79 § .32.39; Rem. Supp. 1947 § 45.32.39.]

48.36.400 Termination of membership. In the event of the termination of membership in the society by the person responsible for the support of any child on whose account a certificate may have been issued, as provided herein, the certificate may be continued for the benefit of the estate of the child: *Provided*, The contributions are continued or for the benefit of any other person responsible for the support and maintenance of such child, who shall assume the payment of the required contributions. [1947 c 79 § .32.40; Rem. Supp. 1947 § 45.32.40.]

48.36.410 Fraternal mutual property insurers. (1) A domestic mutual property insurer which is affiliated with and is comprised exclusively of members of a specified fraternal society, which society conducts its business and secures its membership on the lodge system, having ritualistic work and ceremonies, is herein designated as a fraternal mutual insurer.

(2) Only fraternal mutual property insurers which were authorized insurers immediately prior to October 1, 1947, may hereafter be so authorized.

(3) Such an insurer shall be subject to the applicable provisions of this code governing domestic mutual insurers except only as to the provisions relative to taxes, fees and licenses. The bylaws of such insurer shall be as adopted or amended by majority vote of its members present at a duly held meeting of its members, and a copy thereof shall be filed with the commissioner. Such an insurer shall pay for its annual license and filing its annual statement, the sum of ten dollars. Such an insurer shall pay the expense of examinations of it by the commissioner, upon statement furnished by the commissioner.

(4) Such an insurer may insure corporations, associations, and firms owned by and affiliated with such society and operated for the benefit of its members, and may insure corporations and firms a majority of whose shareholders or members are members of such society.

(5) Such an insurer shall participate in and accept its equitable share of insurance to be issued to applicants under any assigned risk plan operating pursuant to RCW 48.22.020, and may participate in and accept its equitable share of insurance to be issued to applicants under any similar plan lawfully existing in any state in which the insurer is authorized to transact insurance, notwithstanding that such applicants are not otherwise qualified for such insurance under subsection (4), above; except that no such applicants who are not qualified by membership or otherwise for acceptance by the insurer shall be so assigned to the insurer except to make up the deficiency, if any, between the number of qualified applicants available for assignment and the maximum quota of applicants to be assigned to the insurer within the current period.

(6) Such an insurer doing business on the assessment premium plan:

(a) Shall be exempt also from the provisions of this code governing financial qualifications.

(b) Shall not be authorized to transact any kind of insurance other than property insurance, nor have authority to accept reinsurance.

(7) Such an insurer doing business on the cash premium plan:

(a) May be authorized to transact additional kinds of insurance, other than life or title insurance, subject to the same requirements as to surplus funds and reserves as apply to domestic mutual insurers on the cash premium plan.

(b) May accept reinsurance only of such kinds of insurance as it is authorized to transact direct and only from insurers likewise affiliated with and composed solely of the members of the same designated fraternal society. [1963 c 195 § 23; 1949 c 190 § 32; 1947 c 79 § .32.41; Rem. Supp. 1949 § 45.32.41.]

48.36.420 Fraternal mutual life insurers. (1) A mutual life insurer which is affiliated with and insures exclusively members of a specified fraternal society, which society conducts its business and secures its membership on the lodge system, having ritualistic work and ceremonies, is herein designated as a fraternal mutual life insurer.

(2) Such an insurer shall be subject to the applicable provisions of this code governing mutual life insurers except only as to the provisions relative to annual meeting, taxes, fees and licenses. Such an insurer shall pay for its annual license and filing its annual statement, the sum of ten dollars. Such an insurer shall pay the expense of examinations of it by the commissioner, upon statement furnished by the commissioner. [1947 c 79 § .32.42; Rem. Supp. 1947 § 45.32.42.]

48.36.430 Agents. (1) Any person who is authorized by a fraternal benefit society to act in the solicitation, negotiation or procurement of a life insurance, disability insurance, or annuity contract shall be licensed in accordance with and subject to the applicable provisions of chapter 48.17 RCW: *Provided*, That such persons who are so authorized by a fraternal benefit society for a period of one year immediately prior to June 13, 1963 shall not be required to take and pass an examination as required by RCW 48.17.110. This provision shall take effect on October 1, 1963.

(2) The following individuals shall not be deemed an agent of a fraternal benefit society within the provisions of subsection (1) of this section:

(a) any regular salaried officer or employee of a licensed society who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained; or

(b) any agent or representative of a society who devotes, or intends to devote, less than fifty percent of his time to the solicitation and procurement of insurance contracts for such society: *Provided*, That any person who in the preceding calendar year has solicited and

procured life insurance contracts on behalf of any society in an amount of insurance in excess of fifty thousand dollars shall be conclusively presumed to be devoting, or intending to devote, fifty percent of his time to the solicitation or procurement of insurance contracts for such society. [1963 c 195 § 24.]

48.36.440 Application of chapter 48.18A RCW. Chapter 48.18A RCW, as from time to time amended, shall also apply as to domestic fraternal benefit societies operating on the legal reserve basis, and such a society shall be deemed to be a "life insurer" for the purpose of such chapter. [1973 1st ex.s. c 163 § 10.]

**Chapter 48.40
BURIAL INSURANCE—FUNERAL
CERTIFICATES**

Sections

- 48.40.080 Sale, etc., of contract or certificate for funeral services—Laws applicable.
- 48.40.090 Fraternal, benevolent associations, etc., and labor unions excepted.

48.40.080 Sale, etc., of contract or certificate for funeral services—Laws applicable. The sale, offering for sale or otherwise disposing of for value any contract, share, certificate, right or interest granting or purporting to grant to the purchaser, or holder thereof, or to his heirs, children, dependents, members of his family, administrators, survivors, executors or assigns, any right to funeral services, and/or personal property, facilities and services, customarily furnished relative thereto or therewith, either in whole or in part, contingent upon the death of such a purchaser, holder, children, dependents or members of his family, is hereby made subject to the same terms, conditions, provisions and regulations as the issuance of life insurance under Title 48 RCW and any amendments thereto, and shall be subject to and governed thereby. [1953 c 279 § 1.]

48.40.090 Fraternal, benevolent associations, etc., and labor unions excepted. This chapter shall not apply to any funeral right or benefit issued or granted as an incident to or reason of membership in any fraternal or benevolent association or cooperative or society, or labor union not organized for profit. [1953 c 279 § 2.]

**Chapter 48.44
HEALTH CARE SERVICES**

Sections

- 48.44.010 Definitions.
- 48.44.011 Agent defined.
- 48.44.015 Registration by health care service contractors and licensing of agents required—Penalty.
- 48.44.020 Agreement for services—Submission of contract forms to commissioner—Grounds for disapproval.
- 48.44.025 Agreements for vision care—Performance by nonparticipating optometrists—Reimbursement or indemnity to be provided.
- 48.44.030 Indemnity to be underwritten by insurance policy, bond, securities, or cash deposit.
- 48.44.040 Registration with commissioner—Fee.
- 48.44.045 Health care service contract agent's license—Fee—Issuance and renewal procedure.

- 48.44.050 Rules and regulations.
- 48.44.060 Penalty.
- 48.44.070 Contracts to be filed with commissioner.
- 48.44.080 Contractor to file with commissioner lists of its participants—Notice of termination.
- 48.44.090 Refusal to register corporate, etc., contractor if name confusing with existing contractor or insurance company.
- 48.44.095 Annual financial statement—Filing.
- 48.44.100 Filing inaccurate financial statement prohibited.
- 48.44.110 False representation, advertising.
- 48.44.120 Misrepresentations of contract terms, benefits, etc.
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- 48.44.160 Revocation, suspension, refusal of registration—Notice and hearing required—Cease and desist orders, injunctive action—Grounds.
- 48.44.162 Revocation, suspension, refusal of agent's license—Grounds.
- 48.44.164 Notice of suspension, revocation or refusal to be given contractor—Authority of agents.
- 48.44.166 Fine in addition to or in lieu of suspension, revocation or refusal.
- 48.44.170 Hearings and appeals.
- 48.44.180 Enforcement.
- 48.44.200 Individual health care service plan contracts—Coverage of dependent child not to terminate if child mentally or physically handicapped.
- 48.44.210 Group health care service plan contracts—Coverage of dependent child not to terminate if child mentally or physically handicapped.
- 48.44.212 Coverage of dependent children to include newborn infants and congenital anomalies from moment of birth.
- 48.44.220 Discrimination prohibited.
- 48.44.230 Individual health service plan contract—Return within ten days of delivery—Void ab initio.
- 48.44.240 Alcoholism treatment benefits—Provisions of contracts entered into or renewed after January 1, 1975.
- 48.44.241 Alcoholism treatment benefits—RCW 48.21.160-48.21.190, 48.44.240 inapplicable where contract provides for right of renewal without change.

48.44.010 Definitions. For the purposes of this chapter:

(1) "Health care services" means and includes medical, surgical, dental, hospital and other therapeutic services. The services of an optometrist licensed by the state of Washington and the services of a pharmacist registered by the state of Washington are also declared to be health care services for the purposes of this chapter.

(2) "Doctor" means any person lawfully licensed or authorized to render any health care services.

(3) "Health care service contractor" means any corporation, cooperative group, or association, which corporation, cooperative group, or association is sponsored by or otherwise intimately connected with a group of doctors licensed by the state of Washington or by a group of hospitals licensed by the state of Washington; or doctor licensed by the state of Washington; or group of doctors licensed by the state of Washington, who or which not otherwise being engaged in the insurance business, accepts prepayment for health care services from or for the benefit of persons or groups of persons as consideration for providing such persons with any

health care services. The term also includes any corporation, cooperative group, or association, sponsored by or otherwise intimately connected with a group of pharmacists registered by the state of Washington; or any pharmacist, or group of pharmacists, registered by the state of Washington; who or which not otherwise being engaged in the insurance business, accepts prepayment for health care services from or for the benefit of persons or groups of persons as consideration for providing such persons with any health care services.

(4) "Participant" means a doctor, hospital, or licensed pharmacy, drug store or dispensary, who or which has contracted in writing with a health care service contractor to accept payment from and to look solely to such contractor according to the terms of the subscriber contract for any health care services rendered to a person who has previously paid such contractor for such services. [1965 c 87 § 1; 1961 c 197 § 1; 1947 c 268 § 1; Rem. Supp. 1947 § 6131-10.]

Saving—1961 c 197: "Nothing in section 1 of this amendatory act of 1961 shall affect the qualification of any currently registered health care service contractor which qualified as such under prior law, but which would not so qualify under section 1 of this amendatory act of 1961." [1961 c 197 § 17.] This applies to 1961 c 197 § 1 amending 1947 c 268 § 1 (RCW 48.44.010).

48.44.011 Agent defined. Agent, as used in this chapter, means any person appointed or authorized by a health care service contractor to solicit applications for health care service contracts on its behalf. [1969 c 115 § 7.]

Reviser's note: "this 1969 amendatory act" changed to "this chapter", see note following RCW 48.44.160.

48.44.015 Registration by health care service contractors and licensing of agents required—Penalty. (1) No person shall in this state, by mail or otherwise, act as or hold himself out to be a health care service contractor, as defined in RCW 48.44.010 without being duly registered therefor with the commissioner.

(2) The issuance, sale or offer for sale in this state of securities of its own issue by any health care service contractor domiciled in this state other than the memberships and bonds of a nonprofit corporation shall be subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits the same as if health care service contractors were domestic insurers.

(3) On or after July 1, 1969, no person shall in this state act as or hold himself out to be an agent of a health care service contractor, as defined in RCW 48.44.011, unless then licensed therefor by this state: *Provided*, That this subsection shall not apply to insurance agents or brokers licensed under chapter 48.17 RCW with authority to sell disability insurance.

Any person violating any provision of this section shall be liable to a fine of not to exceed five hundred dollars and imprisonment for not to exceed six months for each instance of such violation. [1969 c 115 § 6.]

48.44.020 Agreement for services—Submission of contract forms to commissioner—Grounds for disapproval. (1) Any health care service contractor may enter into agreements with or for the benefit of persons or

groups of persons which require prepayment for health care services by or for such persons in consideration of such health care service contractor providing one or more health care services to such persons and such activity shall not be subject to the laws relating to insurance if the health care services are rendered by the health care service contractor or by a participant.

(2) The commissioner may require the submission of contract forms for his examination and may on examination, subject to the right of the health care service contractor to demand and receive a hearing under chapters 48.04 and 34.04 RCW, disapprove any contract form for any of the following grounds:

(a) If it contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract; or

(b) If it has any title, heading or other indication of its provisions which is misleading; or

(c) If purchase of health care services thereunder is being solicited by deceptive advertising; or

(d) If, the benefits provided therein are unreasonable in relation to the amount charged for the contract;

(e) If it contains unreasonable restrictions on the treatment of patients; or

(f) If it fails to conform to minimum provisions or standards required by regulation made by the commissioner pursuant to chapter 34.04 RCW. [1973 1st ex.s. c 65 § 1; 1969 c 115 § 1; 1961 c 197 § 2; 1947 c 268 § 2; Rem. Supp. 1947 § 6131-11.]

48.44.025 Agreements for vision care—Performance by nonparticipating optometrists—Reimbursement or indemnity to be provided. Whenever a health care service contractor has entered into an agreement with his subscribers for vision care, and this service is performed by a licensee under chapter 18.53 RCW, who is neither a health care service contractor nor a participant, then reimbursement or indemnity shall be provided the persons paying for this service in the same amount as that given to a participant. [1969 c 143 § 1.]

48.44.030 Indemnity to be underwritten by insurance policy, bond, securities, or cash deposit. If any of the health care services which are promised in any such agreement are not to be performed by the health care service contractor, or by a participant, such activity shall not be subject to the laws relating to insurance, but such agreement shall contain provision for reimbursement or indemnity of the persons paying for such services which agreement shall either be underwritten by an insurance company authorized to write accident, health and disability insurance in the state or guaranteed by a surety company authorized to do business in this state, or guaranteed by a deposit of cash or securities eligible for investment by insurers pursuant to chapter 48.13 RCW, with the insurance commissioner, as hereinafter provided. If the agreement is underwritten by an insurance company, the contract or policy of

insurance may designate the health care service contractor as the named insured, but shall be for the benefit of the persons who have paid for or contracted for such health care services. If the agreement is guaranteed by a surety company, the surety bond shall designate the state of Washington as the named obligee, but shall be for the benefit of the persons who have paid for or contracted for such health care services, and shall be in such amount as the insurance commissioner shall direct, but in no event in a sum greater than the amount of fifty thousand dollars or one-twelfth of the total sum of money received by the health care service contractor during the preceding twelve months as prepayment for health care services, whichever amount is greater. A copy of such insurance policy or surety bond, as the case may be, and any modification thereof, shall be filed with the insurance commissioner. If the agreement is guaranteed by a deposit of cash or securities, such deposit shall be in such amount as the insurance commissioner shall direct, but in no event in a sum greater than the amount of fifty thousand dollars or one-twelfth of the total sum of money received by the health care service contractor during the preceding twelve months as prepayment for health care services, whichever amount is greater. Such cash or security deposit shall be held in trust by the insurance commissioner and shall be for the benefit of the persons who have paid for or contracted for such health care services. [1969 c 115 § 2; 1961 c 197 § 3; 1947 c 268 § 3; Rem. Supp. 1947 § 6131-12.]

48.44.040 Registration with commissioner—Fee. Every health care service contractor who or which enters into agreements which require prepayment for health care services shall register with the insurance commissioner on forms to be prescribed and provided by him. Such registrants shall state their name, address, type of organization, area of operation, type or types of health care services provided, and such other information as may reasonably be required by the insurance commissioner and shall file with such registration a copy of all contracts being offered and a schedule of all rates charged. No registrant shall change any rates, modify any contract, or offer any new contract, until he has filed a copy of the changed rate schedule, modified contract, or new contract with the insurance commissioner. The insurance commissioner shall charge a fee of ten dollars for the filing of each original registration statement and may require each registrant to file a current reregistration statement annually thereafter. [1947 c 268 § 4; Rem. Supp. 1947 § 6131-13.]

48.44.045 Health care service contract agent's license—Fee—Issuance and renewal procedure. The fee for the issuance of a license as a health care service contract agent and the annual renewal thereof shall be five dollars. Applications and qualifications for licenses shall be in accordance with the provisions in RCW 48.17.070, RCW 48.17.090, and RCW 48.17.150 (1) (a), (b), (c) and (2) to the extent not inconsistent herewith. Procedures for the issuance and renewal of such licenses shall be the same as provided for life and disability

agents under RCW 48.17.500. Insurance agents or brokers licensed under chapter 48.17 RCW and qualified to sell disability insurance need not be licensed as health care service contract agents under this chapter. [1969 c 115 § 8.]

Reviser's note: "this 1969 amendatory act" changed to "this chapter", see note following RCW 48.44.160.

48.44.050 Rules and regulations. The insurance commissioner shall make reasonable regulations in aid of the administration of this chapter which may include, but shall not be limited to regulations concerning the maintenance of adequate insurance, bonds, or cash deposits, information required of registrants, and methods of expediting speedy and fair payments to claimants. [1947 c 268 § 5; Rem. Supp. 1947 § 6131-14.]

48.44.060 Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a gross misdemeanor. [1947 c 268 § 6; Rem. Supp. 1947 § 6131-15.]

48.44.070 Contracts to be filed with commissioner. Forms of contracts between health care service contractors and participants shall be filed with the insurance commissioner prior to use. [1965 c 87 § 2; 1961 c 197 § 4.]

48.44.080 Contractor to file with commissioner lists of its participants—Notice of termination. Every health care service contractor shall file with the insurance commissioner lists of the participants with whom or with which such health care service contractor has executed contracts of participation, certifying that each such participant has executed such contract of participation. The health care service contractor shall immediately notify the insurance commissioner in writing in case of the termination of any such contract. [1965 c 87 § 3; 1961 c 197 § 5.]

48.44.090 Refusal to register corporate, etc., contractor if name confusing with existing contractor or insurance company. The insurance commissioner shall refuse to accept the registration of any corporation, cooperative group, or association seeking to act as a health care service contractor if, in his discretion, the insurance commissioner deems that the name of the corporation, cooperative group, or association would be confused with the name of an existing registered health care service contractor or authorized insurance company. [1961 c 197 § 6.]

48.44.095 Annual financial statement—Filing. Every health care service contractor shall annually, within one hundred twenty days of the closing date of its fiscal year, file with the commissioner a statement verified by at least two of the principal officers of the health care service contractor showing its financial condition as of the closing date of its fiscal year. The statement shall be in such form as is furnished or prescribed by the commissioner. A health care service contractor failing to make and file its annual statement in the form and

within the time herein specified shall forfeit fifty dollars for each day during which such failure continues after written notification by the commissioner of such failure, and thirty days after the notice the commissioner may terminate the health care service contractor's authority to do new business while such default continues. The commissioner may for good reason allow a reasonable extension of the time within which such annual statement shall be filed. [1969 c 115 § 5.]

48.44.100 Filing inaccurate financial statement prohibited. No person shall knowingly file with any public official or knowingly make, publish, or disseminate any financial statement of a health care service contractor which does not accurately state the health care service contractor's financial condition. [1961 c 197 § 7.]

48.44.110 False representation, advertising. No person shall knowingly make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of the business of a health care service contractor, or relative to the business of a health care service contractor or to any person engaged therein. [1961 c 197 § 8.]

48.44.120 Misrepresentations of contract terms, benefits, etc. No person shall knowingly make, issue, or circulate, or cause to be made, issued, or circulated, a misrepresentation of the terms of any contract, or the benefits or advantages promised thereby, or use the name or title of any contract or class of contract misrepresenting the nature thereof. [1961 c 197 § 9.]

48.44.130 Future dividends or refunds—When permissible. No health care service contractor nor any individual acting on behalf thereof shall guarantee or agree to the payment of future dividends or future refunds of unused charges or savings in any specific or approximate amounts or percentages in respect to any contract being offered to the public, except in a group contract containing an experience refund provision. [1961 c 197 § 10.]

48.44.140 Misleading comparisons to terminate or retain contract. No health care service contractor nor any person representing a health care service contractor shall by misrepresentation or misleading comparisons induce or attempt to induce any member of any health care service contractor to terminate or retain a contract or membership. [1961 c 197 § 11.]

48.44.145 Complaints against contractor—Statement required— Examination of contractor applying for initial admission. (1) On receipt of a verified complaint alleging that a health care service contractor is insolvent or that its manner of transacting business is contrary to this chapter, the commissioner may demand from the health care service contractor a statement, under oath, setting forth its assets and liabilities or course of conduct, as applicable. He may, for the purpose of verifying the correctness of such statement, examine the

books and business affairs of the health care service contractor.

(2) If such a statement is not furnished within twenty days from the time of such demand by the commissioner or if, upon the examination of such records the statement furnished or any record examined is found to include any material misstatement of fact, the expense of the examination shall be paid by the health care service contractor.

(3) Whenever any health care service contractor applies for initial admission, the commissioner may make, or cause to be made, an examination of the applicant's business and affairs. Whenever such an examination is made, all of the provisions of chapter 48.03 RCW not inconsistent with this chapter shall be applicable. In lieu of making an examination himself the commissioner may, in the case of a foreign health care service contractor, accept an examination report of the applicant by the regulatory official in its state of domicile. [1969 c 115 § 12.]

Reviser's note: "this 1969 amendatory act" changed to "this chapter", see note following RCW 48.44.160.

48.44.150 Certificate of registration not an endorsement—Display in solicitation prohibited. The granting of a certificate of registration to a health care service contractor is permissive only, and shall not constitute an endorsement by the insurance commissioner of any person or thing related to the health care service contractor, and no person shall advertise or display a certificate of registration for use as an inducement in any solicitation. [1961 c 197 § 12.]

48.44.160 Revocation, suspension, refusal of registration—Notice and hearing required—Cease and desist orders, injunctive action—Grounds. The insurance commissioner may, after notice and hearing, pursuant to chapters 48.04 and 34.04 RCW, revoke, suspend, or refuse to accept or renew registration from any health care service contractor, or he may issue a cease and desist order, or bring an action in any court of competent jurisdiction to enjoin a health care service contractor from doing further business in this state, if such health care service contractor:

(1) Fails to comply with any provision of chapter 48.44 RCW or any proper order or regulation of the commissioner.

(2) Is found by the commissioner to be in such financial condition that its further transaction of business in this state would jeopardize the payment of claims and refunds to subscribers.

(3) Has refused to remove or discharge a director or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude, after written request by the commissioner for such removal, and expiration of a reasonable time therefor as specified in such request.

(4) Usually compels claimants under contracts either to accept less than the amount due them or to bring suit against it to secure full payment of the amount due.

(5) Is affiliated with and under the same general management, or interlocking directorate, or ownership

as another health care contractor which operates in this state without having registered therefor, except as is permitted by this chapter.

(6) Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(7) Fails to pay any final judgment rendered against it in this state upon any contract, bond, recognizance, or undertaking issued or guaranteed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later.

(8) Is found by the commissioner, after investigation or upon receipt of reliable information, to be managed by persons, whether by its directors, officers, or by any other means, who are incompetent or untrustworthy or so lacking in health care contracting or related managerial experience as to make the operation hazardous to the subscribing public; or that there is good reason to believe it is affiliated directly or indirectly through ownership, control, or other business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders, or investors or creditors or subscribers or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance. [1973 1st ex.s. c 65 § 2; 1969 c 115 § 3; 1961 c 197 § 13.]

Reviser's note: The term "this 1969 amendatory act" as used in the 1969 act amending this section [1969 c 115], has been changed to "this chapter". The act consists of amendments to RCW 48.44.020, 48.44.030, 48.44.160, and to new sections RCW 48.44.011, 48.44.015, 48.44.045, 48.44.095, 48.44.145 and 48.44.162-48.44.166, 48.44.220.

48.44.162 Revocation, suspension, refusal of agent's license—Grounds. The commissioner may suspend, revoke or refuse to issue or renew any agent's license which is issued or may be issued under this chapter, subject to the right of the licensee or applicant to demand and receive a hearing pursuant to chapters 48.04 and 34.04 RCW, in accordance with the procedure set forth in RCW 48.17.540, for any of the following causes if the licensee or applicant:

(1) Wilfully violates or knowingly participates in the violation of any provision of this chapter, or any proper order or regulation of the commissioner.

(2) Has attempted to obtain a license through misrepresentation or fraud.

(3) Has misappropriated or converted to his own use or has illegally withheld moneys paid to him in connection with a health care service contract.

(4) Has been convicted by final judgment of a felony.

(5) Has, with intent to deceive, materially misrepresented the terms or effect of any health care service contract, or has engaged or is about to engage in any fraudulent transaction.

(6) Has represented a health care service contractor unlawfully doing business here without being licensed therefor.

(7) Has shown himself to be incompetent, untrustworthy, or an actual or potential source of loss or injury to the public. [1973 1st ex.s. c 65 § 3; 1969 c 115 § 9.]

Reviser's note: "this 1969 amendatory act" changed to "this chapter", see note following RCW 48.44.160.

48.44.164 Notice of suspension, revocation or refusal to be given contractor—Authority of agents. Upon the suspension, revocation or refusal of a health care service contractor's registration, the commissioner shall give notice thereof to such contractor and shall likewise suspend, revoke or refuse the authority of its agents to represent it in this state and give notice thereof to the agents. [1969 c 115 § 10.]

48.44.166 Fine in addition to or in lieu of suspension, revocation or refusal. After hearing and in addition to or in lieu of the suspension, revocation or refusal to renew any registration of a health care service contractor or any licensed agent thereof the commissioner may levy a fine against the party involved in an amount not less than fifty dollars and not more than one thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the commissioner shall revoke the registration or license of the party involved, if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1969 c 115 § 11.]

48.44.170 Hearings and appeals. For the purposes of this chapter, the insurance commissioner shall be subject to and may avail himself of the provisions of chapter 48.04 RCW, which relate to hearings and appeals. [1961 c 197 § 14.]

48.44.180 Enforcement. For the purposes of this chapter, the insurance commissioner shall have the same powers and duties of enforcement as are provided in RCW 48.02.080. [1961 c 197 § 15.]

48.44.200 Individual health care service plan contracts—Coverage of dependent child not to terminate if child mentally or physically handicapped. An individual health care service plan contract, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the health care service plan corporation by the subscriber

within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the corporation but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1969 ex.s. c 128 § 1.]

48.44.210 Group health care service plan contracts—Coverage of dependent child not to terminate if child mentally or physically handicapped. A group health care service plan contract, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (2) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the health care service plan corporation by the employee or member within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the corporation, but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1969 ex.s. c 128 § 2.]

48.44.212 Coverage of dependent children to include newborn infants and congenital anomalies from moment of birth. Any health care service plan contract under this chapter delivered or issued for delivery in this state more than one hundred twenty days after February 16, 1974, which provides coverage for dependent children of the insured or covered group member, shall provide coverage for newborn infants of the insured or covered group member from and after the moment of birth. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth. [1974 1st ex.s. c 139 § 3.]

48.44.220 Discrimination prohibited. No health care service contractor shall deny coverage to any person solely on account of race, religion or national origin. [1969 c 115 § 4.]

48.44.230 Individual health service plan contract—Return within ten days of delivery—Void ab initio. Every subscriber of an individual health care service plan contract issued after September 1, 1973, may return the contract to the health care service contractor or the agent through whom it was purchased within ten days of its delivery to the subscriber if, after examination of the contract, he is not satisfied with it for any reason, and the health care service contractor shall refund promptly any fee paid for such contract. Upon such return of the contract it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. Notice of the substance of

this section shall be printed on the face of each such contract or be attached thereto. [1973 1st ex.s. c 65 § 4.]

48.44.240 Alcoholism treatment benefits—Provisions of contracts entered into or renewed after January 1, 1975. Each contract for health care services which is entered into, or renewed, on or after January 1, 1975 between a health care service contractor and the person or persons to receive such care shall contain provisions providing benefits for the treatment of alcoholism rendered to such person or persons by an alcoholic treatment facility which is an "approved treatment facility" under RCW 70.96A.020(2). [1974 1st ex.s. c 119 § 4.]

Legislative declaration: See RCW 48.21.160.

48.44.241 Alcoholism treatment benefits—RCW 48.21.160—48.21.190, 48.44.240 inapplicable where contract provides for right of renewal without change. See RCW 48.21.190.

Chapter 48.48 STATE FIRE MARSHAL

Sections

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| 48.48.010 | Commissioner ex officio state fire marshal. |
| 48.48.020 | Deputy fire marshals—Resident marshals. |
| 48.48.030 | Examination of premises. |
| 48.48.040 | Standards of safety. |
| 48.48.045 | Schools—Standards for construction for fire prevention and safety—Plan reviews and construction inspections. |
| 48.48.050 | Removal of fire hazards. |
| 48.48.060 | Reports and investigation of fires. |
| 48.48.070 | Examination of witnesses. |
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| 48.48.130 | Hearings and appeals. |

Fire protection districts: Title 52 RCW.

Fire regulations applicable to places of refuge subject to approval of state fire marshal: RCW 74.15.050.

Maternity homes, duties of fire marshal relative to: RCW 18.46.110.

Nursing homes, duties of fire marshal relative to: RCW 18.51.140.

Public fireworks displays, fire marshal to make rules and regulations for granting permits: RCW 70.77.250.

Safety requirements as to doors, public buildings and places of entertainment: RCW 70.54.070.

Transient accommodations, rules and regulations: RCW 70.62.290.

48.48.010 Commissioner ex officio state fire marshal. The commissioner shall ex officio be state fire marshal. The commissioner shall receive no additional compensation on account of his services as state fire marshal. [1947 c 79 § .33.01; Rem. Supp. 1947 § 45.33.01.]

48.48.020 Deputy fire marshals—Resident marshals. (1) The state fire marshal may appoint a chief deputy state fire marshal and such additional deputy state fire marshals as he deems necessary for the discharge of his duties pursuant to this chapter, and shall fix their compensation and from time to time prescribe their respective duties. The state fire marshal may terminate any such appointment at any time.

(2) Any power or duty vested in the state fire marshal by this chapter may be exercised or discharged by any deputy state fire marshal acting in the name and by the authority of the state fire marshal.

(3) The commissioner may also designate as an ex officio resident fire marshal, the chief of any organized fire department within this state, or the fire marshal, fire supervisor or inspector of any county or of any state college, university, hospital, or other state institution, and may revoke any such designation so made. [1969 ex.s. c 241 § 17; 1947 c 79 § .33.02; Rem. Supp. 1947 § 45.33.02.]

48.48.030 Examination of premises. (1) The state fire marshal or any deputy state fire marshal shall have authority at all times of day and night, in the performance of duties imposed by this chapter, to enter upon and examine any building or premises where any fire has occurred and other buildings and premises adjoining or near thereto.

(2) The state fire marshal or any deputy state fire marshal shall have authority at any reasonable hour to enter into any public building or premises or any building or premises used for public purposes to inspect for fire hazards.

(3) Within his jurisdiction a resident fire marshal may exercise like powers as are conferred by subsections (1) and (2) of this section upon the state fire marshal. Such power in a resident fire marshal shall not be to the exclusion of any power of the state fire marshal or of any deputy state fire marshal. [1947 c 79 § .33.03; Rem. Supp. 1947 § 45.33.03.]

48.48.040 Standards of safety. (1) In jurisdictions within this state other than those in which there is in force a comprehensive local fire prevention and safety code, the state fire marshal or any deputy fire marshal shall have authority to enter upon all premises and into all buildings except private dwellings for the purpose of inspection to ascertain if any fire hazard exists, and to require conformance with minimum standards for the prevention of fire and for the protection of life and property against fire and panic as to use of premises, and may adopt by reference nationally recognized standards applicable to local conditions.

(2) A resident fire marshal shall have authority to enforce within his jurisdiction such ordinances and laws relative to fire prevention and safety and use of premises as may be in force therein. In areas outside those covered by such local fire prevention and safety codes, the jurisdiction of any such resident fire marshal shall be subordinate to that of the state fire marshal.

(3) In areas covered by such fire prevention and safety codes the state fire marshal may, upon request by the chief fire official or the local governing body or of taxpayers of such area, assist in the enforcement of any such code. [1947 c 79 § .33.04; Rem. Supp. 1947 § 45.33.04.]

48.48.045 Schools—Standards for construction for fire prevention and safety—Plan reviews and construction inspections. Standards for construction relative to

fire prevention and safety for all schools under the jurisdiction of the superintendent of public instruction and state board of education shall be established by the state fire marshal, who shall adopt such nationally recognized fire and building codes and standards as may be applicable to local conditions. After the approval of such standards by the superintendent of public instruction and the state board of education, and review by the advisory board for school building systems established in RCW 28A.04.310, the fire marshal shall make or cause to be made plan reviews and construction inspections as may be necessary to insure compliance with said codes and standards.

Political subdivisions of the state having and enforcing such fire and building codes and standards at least equal to or higher than those by the state fire marshal as provided for in this section shall be exempted from the plan review and construction inspection provisions of this section within their respective subdivision for as long as such codes and standards are enforced. [1972 ex.s. c 70 § 1.]

48.48.050 Removal of fire hazards. (1) If the state fire marshal or his deputy finds in any building or premises subject to their inspection under this chapter, any combustible material or flammable conditions or fire hazards dangerous to the safety of the building, premises, or to the public, he shall by written order require such condition to be remedied, and such order shall forthwith be complied with by the owner or occupant of the building or premises.

(2) An owner or occupant aggrieved by any such order made by a deputy state fire marshal may within five days after the date of the order appeal to the state fire marshal. If the state fire marshal confirms the order, the order shall remain in force and be complied with by the owner or occupant.

(3) Any owner or occupant failing to comply with any such order not appealed from or with any order so confirmed shall be punishable by a fine of not less than ten dollars nor more than fifty dollars for each day such failure exists. [1947 c 79 § .33.05; Rem. Supp. 1947 § 45.33.05.]

48.48.060 Reports and investigation of fires. (1) The chief of each organized fire department, or the sheriff having jurisdiction over areas not within the jurisdiction of any fire department, shall forthwith notify the state fire marshal of all fires of criminal, suspected, or undetermined origin occurring within the jurisdiction of such fire department or sheriff.

(2) The state fire marshal may investigate any fire for the purpose of determining its cause or origin or the extent of the loss, or both. [1947 c 79 § .33.06; Rem. Supp. 1947 § 45.33.06.]

48.48.070 Examination of witnesses. In the conduct of any investigation into the cause, origin, or loss resulting from any fire, the state fire marshal shall have the same power and rights relative to securing the attendance of witnesses and the taking of testimony under oath as is conferred upon the commissioner under

RCW 48.03.070. False swearing by any such witness shall be deemed to be perjury and shall be subject to punishment as such. [1947 c 79 § .33.07; Rem. Supp. 1947 § 45.33.07.]

48.48.080 Criminal prosecutions. If as the result of any such investigation, or because of any information received by him, the state fire marshal is of the opinion that there is evidence sufficient to charge any person with any crime, he may cause such person to be arrested and charged with such offense, and shall furnish to the prosecuting attorney of the county in which the offense was committed, the names of witnesses and all pertinent and material evidence and testimony within his possession relative to the offense. [1947 c 79 § .33.08; Rem. Supp. 1947 § 45.33.08.]

48.48.090 Record of fires. The state fire marshal shall keep on file in his office all reports of fires made to him or to the commissioner pursuant to this code. Such records shall at all times during business hours be open to public inspection; except, that any testimony taken in a fire investigation may, in the discretion of the state fire marshal, be withheld from public scrutiny. The state fire marshal may destroy any such report after five years from its date. [1947 c 79 § .33.09; Rem. Supp. 1947 § 45.33.09.]

48.48.100 Fire prevention. The state fire marshal may from time to time disseminate within this state information concerning the causes, prevention, and reduction of damage from fire. [1947 c 79 § .33.10; Rem. Supp. 1947 § 45.33.10.]

48.48.110 Annual report. The state fire marshal shall submit annually as of the first day of January a report to the governor of this state. The report shall contain a detailed statement of his official acts pursuant to this chapter. [1947 c 79 § .33.11; Rem. Supp. 1947 § 45.33.11.]

48.48.120 Forms, blanks, circulars, etc., at expense of state. All forms, blanks, circulars, posters and such reports as may be required pursuant to the provisions of this chapter, shall be furnished at the expense of the state. [1947 c 79 § .33.12; Rem. Supp. 1947 § 45.33.12.]

48.48.130 Hearings and appeals. The commissioner, as state fire marshal, shall be subject to and may avail himself of the applicable provisions of chapter 48.04 RCW, relating to hearings and appeals. [1947 c 79 § .33.13; Rem. Supp. 1947 § 45.33.13.]

Chapter 48.52

EMPLOYEE WELFARE TRUST FUNDS

Sections

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| 48.52.010 | Definitions. |
| 48.52.015 | Trustees to register fund with commissioner. |
| 48.52.020 | Examinations of trust funds—Costs. |
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| 48.52.040 | Insurers and health care contractors—Contracts and fees—Filing, inspection, destruction. |
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| 48.52.080 | Penalties. |
| 48.52.090 | Coverage, benefits or services for dependent children to include congenital anomalies of newborn children. |

48.52.010 Definitions. As used in this chapter:

(1) "Commissioner" means the insurance commissioner of the state of Washington.

(2) "Employee welfare trust fund" means any fund established for employees of one or more employers for providing employees, their families or dependents medical or hospital care, disability benefits, death benefits, retirement benefits, annuity benefits, health care services or any insurance benefits whether such benefits or services are to be paid directly from such fund or interest therefrom, or paid under contracts entered into by the trustees of the fund with an insurer or health care service contractor.

(3) "Health care service contractor" means health care service contractor as defined in RCW 48.44.010.

(4) "Insurer" means insurer as defined in RCW 48.01.050.

(5) "Person" means any individual, company, insurer, association, organization, reciprocal or interinsurance exchange, partnership, business trust, or corporation. [1955 ex.s. c 8 § 1.]

48.52.015 Trustees to register fund with commissioner. The trustees of every employee welfare trust fund hereafter formed or presently existing within this state shall register such fund with the commissioner. The registration shall be in such form and shall contain such information relating to the organization, operations and affairs of such fund as is prescribed by the commissioner. [1965 ex.s. c 69 § 4.]

48.52.020 Examinations of trust funds—Costs. The commissioner may examine each employee welfare trust fund as often as he deems necessary, and the commissioner shall examine each employee welfare trust fund consisting of more than twenty-five participants at least once every five years. The commissioner, for the purpose of this section, shall have the same powers and duties of examination as provided in chapter 48.03 RCW: *Provided*, That the costs and expenses of the commissioner and examiners shall be paid by the state, except as provided in RCW 48.52.030. [1965 ex.s. c 69 § 1; 1961 c 174 § 1; 1955 ex.s. c 8 § 2.]

48.52.030 Records, accounts, reports—Costs of examination if out of state—Trustees' duties—Inspection, destruction. (1) The trustees of every employee welfare trust fund existing within this state shall be responsible for the maintenance of full and accurate records and accounts of the transactions and affairs of such employee welfare trust fund in conformance with generally accepted accounting practices and principles. If such records and accounts are not maintained within this state, then the costs and expenses of the commissioner and examiners provided for in RCW 48.52.020

shall be paid by the employee welfare trust fund being examined in the same manner and to the same extent as is provided in RCW 48.03.060 for examination of insurers.

(2) Such trustees shall promptly file with the commissioner a copy of the trust instrument or other instrument by which the employee welfare trust fund is established, together with all amendments thereto. The trustees of every employee welfare trust fund consisting of more than twenty-five participants shall file in the office of the commissioner, annually within five months after the close of the fiscal year used in maintaining the records of such fund, a statement, to be known as the annual statement of such fund, verified by the oath of the trustee, or if there is more than one trustee, then by the oath of at least two of such trustees, showing its condition and affairs during such fiscal year. Such statement shall be in such form and contain such information as the commissioner from time to time prescribes. Upon request of the commissioner the trustees shall file with the commissioner such other reports concerning the transactions and affairs of such employee welfare trust fund as the commissioner may from time to time deem to be necessary or advisable for carrying out the purposes of this chapter. All such reports shall be open to inspection by the public in the commissioner's office, and when obsolete shall be subject to destruction by the commissioner as provided in RCW 48.02.120. [1965 ex.s. c 69 § 2; 1961 c 174 § 2; 1955 ex.s. c 8 § 3.]

48.52.040 Insurers and health care contractors—Contracts and fees—Filing, inspection, destruction. (1) Each insurer and each health care service contractor that issues an insurance contract or health care services contract in consideration of money from any employee welfare trust fund shall promptly file with the commissioner a complete copy of every such contract together with all amendments or riders thereto.

(2) Each such insurer or health care service contractor shall promptly file with the commissioner a statement, on a form as prescribed and furnished by the commissioner, of the rate of all commissions and/or service fees or other similar fees or compensation paid or to be paid by such insurer or contractor in connection with every such insurance contract or health care services contract, and the name of each person receiving any such payment.

(3) Such contracts and statements shall be open to public inspection in the commissioner's office, and when obsolete shall be subject to destruction by the commissioner as provided in RCW 48.02.120. [1955 ex.s. c 8 § 4.]

48.52.050 Enforcement of chapter. The commissioner shall enforce the provisions of this chapter as provided in RCW 48.02.080. [1955 ex.s. c 8 § 5.]

48.52.060 Hearing and review. Any person aggrieved by any act, threatened act, or failure of the commissioner to act shall have the right to a hearing and review thereof as provided in chapters 34.04 and 48.04 RCW. [1967 c 237 § 19; 1955 ex.s. c 8 § 6.]

Effective date—1967 c 237: The effective date of the 1967 amendment to this section is July 1, 1967, see RCW 34.04.921.

Saving—Construction—1967 c 237: See RCW 34.04.931.

Severability—1967 c 237: See RCW 34.04.901.

48.52.070 Exemptions. RCW 48.52.015, 48.52.020 and 48.52.030 shall not apply to such an employee welfare trust fund where the trustee, or all of the trustees are subject to examination by the supervisor of banking of the state of Washington or the comptroller of the currency of the United States or the board of governors of the federal reserve system. [1965 ex.s. c 69 § 3; 1955 ex.s. c 8 § 7.]

48.52.080 Penalties. Any person who fails to comply with the provisions of this chapter, or lawful order of the commissioner made pursuant to this chapter, shall, upon conviction, be punished by a fine of not less than ten dollars nor more than one thousand dollars, or by imprisonment for not more than one year, or both fine and imprisonment. [1955 ex.s. c 8 § 8.]

48.52.090 Coverage, benefits or services for dependent children to include congenital anomalies of newborn children. Any self insurer providing coverage or health care benefits or services for dependent children shall include coverage or health care service benefits or services for congenital anomalies of newborn children from the moment of birth. [1974 1st ex.s. c 139 § 4.]

Chapter 48.56 INSURANCE PREMIUM FINANCE COMPANY ACT

| Sections | Short title. |
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| 48.56.020 | Definitions. |
| 48.56.030 | License—Required—Fee—Information to be furnished—Penalty. |
| 48.56.040 | Investigation of applicant—Qualifications—Hearing. |
| 48.56.050 | Revocation, suspension or refusal to renew. |
| 48.56.060 | Records. |
| 48.56.070 | Rules and regulations. |
| 48.56.080 | Premium finance agreement. |
| 48.56.090 | Service charge. |
| 48.56.100 | Delinquency charge—Cancellation charge. |
| 48.56.110 | Cancellation of insurance contract. |
| 48.56.120 | Cancellation of insurance contract—Return of unearned premiums. |
| 48.56.130 | Filing of agreement. |
| 48.56.900 | Effective date—1969 ex.s. c 190. |

48.56.010 Short title. This chapter shall be known and may be cited as "The Insurance Premium Finance Company Act". [1969 ex.s. c 190 § 1.]

48.56.020 Definitions. As used in this chapter:

(1) "Insurance premium finance company" means a person engaged in the business of entering into insurance premium finance agreements.

(2) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract together with a service charge as authorized and limited by this chapter and as security therefor the insurance premium finance company receives an assignment of the unearned premium.

(3) "Licensee" means a premium finance company holding a license issued by the insurance commissioner under this chapter. [1969 ex.s. c 190 § 2.]

48.56.030 License—Required—Fee—Information to be furnished—Penalty. (1) No person shall engage in the business of financing insurance premiums in the state without first having obtained a license as a premium finance company from the commissioner. Any person who shall engage in the business of financing insurance premiums in the state without obtaining a license as provided hereunder shall, upon conviction, be guilty of a misdemeanor and shall be subject to the penalties provided in this chapter.

(2) The annual license fee shall be one hundred dollars. Licenses may be renewed from year to year as of the first day of May of each year upon payment of the fee of one hundred dollars. The fee for said license shall be paid to the insurance commissioner.

(3) The person to whom the license or the renewal thereof may be issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the commissioner may require. The commissioner shall have authority, at any time, to require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees and he may, in his discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if he is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this chapter.

(4) This section shall not apply to any savings and loan association, bank, trust company, small loan company, industrial loan company or credit union authorized to do business in this state but RCW 48.56.080 through 48.56.130 and any rules promulgated by the commissioner pertaining to such sections shall be applicable to such organizations, if otherwise eligible, under all premium finance transactions wherein an insurance policy, other than a life or disability insurance policy, or any rights thereunder is made the security or collateral for the repayment of the debt, however, neither this section nor the provisions of this chapter shall be applicable to the inclusion of insurance in a retail installment transaction or to insurance purchased in connection with a real estate transaction, mortgage, deed of trust or other security instrument or an insurance company authorized to do business in this state unless the insurance company elects to become a licensee. [1969 ex.s. c 190 § 3.]

48.56.040 Investigation of applicant—Qualifications—Hearing. (1) Upon the filing of an application and the payment of the license fee the commissioner shall make an investigation of each applicant and shall issue a license if the applicant is qualified in accordance with this chapter. If the commissioner does not so find, he shall, within thirty days after he has received such application, at the request of the applicant, give the applicant a full hearing.

(2) The commissioner shall issue or renew a license as may be applied for when he is satisfied that the person to be licensed—

(a) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for,

(b) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for, and

(c) if a corporation, is a corporation incorporated under the laws of the state or a foreign corporation authorized to transact business in the state. [1969 ex.s. c 190 § 4.]

48.56.050 Revocation, suspension or refusal to renew.

(1) The commissioner may revoke or suspend the license of any premium finance company when and if after investigation it appears to the commissioner that—

(a) any license issued to such company was obtained by fraud,

(b) there was any misrepresentation in the application for the license,

(c) the holder of such license has otherwise shown himself untrustworthy or incompetent to act as a premium finance company, or

(d) such company has violated any of the provisions of this chapter.

(2) Before the commissioner shall revoke, suspend, or refuse to renew the license of any premium finance company, he shall give to such person an opportunity to be fully heard and to introduce evidence in his behalf. In lieu of revoking or suspending the license for any of the causes enumerated in this section, after hearing as herein provided, the commissioner may subject such company to a penalty of not more than two hundred dollars for each offense when in his judgment he finds that the public interest would not be harmed by the continued operation of such company. The amount of any such penalty shall be paid by such company through the office of the commissioner to the state treasurer. At any hearing provided by this section, the commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely, after having been administered such oath, shall be subject to the penalty of perjury.

(3) If the commissioner refuses to issue or renew any license or if any applicant or licensee is aggrieved by any action of the commissioner, said applicant or licensee shall have the right to a hearing and court proceeding as provided by statute. [1969 ex.s. c 190 § 5.]

48.56.060 Records. (1) Every licensee shall maintain records of its premium finance transactions and the said records shall be open to examination and investigation by the commissioner. The commissioner may at any time require any licensee to bring such records as he may direct to the commissioner's office for examination.

(2) Every licensee shall preserve its records of such premium finance transactions, including cards used in a card system, for at least three years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement. [1969 ex.s. c 190 § 6.]

48.56.070 Rules and regulations. The commissioner shall have authority to make and enforce such reasonable rules and regulations as may be necessary in making effective the provisions of this chapter, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this chapter. [1969 ex.s. c 190 § 7.]

48.56.080 Premium finance agreement. (1) A premium finance agreement shall—

(a) be dated, signed by or on behalf of the insured, and the printed portion thereof shall be in at least eight point type;

(b) contain the name and place of business of the insurance agent negotiating the related insurance contract, the name and residence or the place of business of the premium finance company to which payments are to be made, a description of the insurance contracts involved and the amount of the premium therefor; and

(c) set forth the following items where applicable—

- (i) the total amount of the premiums,
- (ii) the amount of the down payment,
- (iii) the principal balance (the difference between items (i) and (ii)),
- (iv) the amount of the service charge,
- (v) the balance payable by the insured (sum of items (iii) and (iv)), and
- (vi) the number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(2) The items set out in paragraph (c) of subsection (1) need not be stated in the sequence or order in which they appear in such paragraph (c), and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(3) The information required by subsection (1) of this section shall only be required in the initial agreement where the premium finance company and the insured enter into an open end credit transaction, which is defined as follows: A plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder. [1969 ex.s. c 190 § 8.]

48.56.090 Service charge. (1) A premium finance company shall not charge, contract for, receive, or collect a service charge other than as permitted by this chapter.

(2) The service charge is to be computed on the balance of the premiums due (after subtracting the down payment made by the insured in accordance with the premium finance agreement) from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final installment of the premium finance agreement is payable.

(3) The service charge shall be a maximum of ten dollars per one hundred dollars per year plus an acquisition charge of ten dollars per premium finance agreement which need not be refunded upon cancellation or prepayment. [1969 ex.s. c 190 § 9.]

48.56.100 Delinquency charge—Cancellation charge. A premium finance agreement may provide for the payment by the insured of a delinquency charge of one dollar to a maximum of five percent of the delinquent installment but not to exceed five dollars on any installment which is in default for a period of five days or more.

If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge equal to the difference between any delinquency charge imposed with respect to the installment in default and five dollars. [1969 ex.s. c 190 § 10.]

48.56.110 Cancellation of insurance contract. (1) When a premium finance agreement contains a power of attorney enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be canceled by the premium finance company unless such cancellation is effectuated in accordance with this section.

(2) Not less than ten days' written notice shall be mailed to the insured of the intent of the premium finance company to cancel the insurance contract unless the default is cured within such ten day period.

(3) After expiration of such ten day period, the premium finance company may thereafter request in the name of the insured, cancellation of such insurance contract or contracts by mailing to the insurer a notice of cancellation, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a notice of cancellation to the insured at his last known address.

(4) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second

business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days notice required to complete the cancellation. [1969 ex.s. c 190 § 11.]

48.56.120 Cancellation of insurance contract—Return of unearned premiums. (1) Whenever a financed insurance contract is canceled, the insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds.

(2) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured: *Provided*, That no such refund shall be required if it amounts to less than one dollar. [1969 ex.s. c 190 § 12.]

48.56.130 Filing of agreement. No filing of the premium finance agreement shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors, or assigns. [1969 ex.s. c 190 § 13.]

48.56.900 Effective date—1969 ex.s. c 190. 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 the sixtieth day following passage by the legislature and submission to the governor for action. [1969 ex.s. c 190 § 15.]

Chapter 48.58

RIOT REINSURANCE REIMBURSEMENT

Sections

48.58.010 Riot reinsurance reimbursement—Assessments—Fund.

48.58.010 Riot reinsurance reimbursement—Assessments—Fund. (1) A fund designated "riot reinsurance reimbursement fund" is hereby established, hereafter referred to as the fund which shall be used for the payment of amounts necessary to reimburse the secretary of the department of housing and urban development under the provisions of Section 1223(a)(1) of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448) for losses reinsured by the secretary of the department of housing and urban development and occurring in this state on or after August 1, 1968. After receipt by the state treasurer of a statement requesting reimbursement from the secretary of the department of housing and urban development and upon certification promptly made by the commissioner of insurance hereafter referred to as the commissioner, of the correctness of the amount thereof, the commissioner is hereby authorized to provide for an assessment upon insurers authorized to do business in this state in amounts sufficient for the fund to pay reimbursement to the secretary of the department of housing and urban development: *Provided*, That the

amount assessed each insurer shall be in the same proportion that the premiums written by each insurer in this state bear to the aggregate premiums written in this state by all insurance companies on those lines for which reinsurance was available in this state from the secretary of the department of housing and urban development during the preceding calendar year.

(2) In the event any insurer fails, by reason of insolvency, to pay any assessment as provided herein, the amount assessed each insurer, as computed under subsection (1) of this section, shall be immediately recalculated excluding therefrom the insolvent insurer so that its assessment is, in effect, assumed and redistributed among the remaining insurers.

(3) When assessments as provided herein are made, the individual insurer, after having paid the full amount assessed against the insurer, may deduct from future premium tax liabilities an amount not to exceed twenty percent per annum until such deductions equal the amount of the assessment levied against the insurer.

(4) This section shall cease to be of any force and effect upon termination of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448), except that obligations incurred pursuant to the provisions of this section shall not be impaired by the expiration of the same. [1969 ex.s. c 140 § 1.]

TITLE 49

LABOR REGULATIONS

Chapters

- 49.04 Apprenticeship.
- 49.08 Arbitration of disputes.
- 49.12 Industrial welfare.
- 49.17 Washington industrial safety and health act.
- 49.24 Health and safety—Underground workers.
- 49.26 Health and safety—Asbestos use.
- 49.28 Hours of labor.
- 49.32 Injunctions in labor disputes.
- 49.36 Labor unions.
- 49.40 Seasonal labor.
- 49.44 Violations—Prohibited practices.
- 49.46 Minimum wage act.
- 49.48 Wages—Payment—Collection.
- 49.52 Wages—Deductions—Rebates.
- 49.56 Wages—Priorities—Preferences.
- 49.60 Law against discrimination.
- 49.64 Employee benefit plans.
- 49.66 Health care activities.

Reviser's note: Throughout this title, "director of labor and industries" has been substituted for "commissioner of labor", such office having been abolished by the administrative code of 1921 (1921 c 7 §§ 3, 80, and 135).

Apprentices to be paid prevailing wage on public works: RCW 39.12.021.

Blind or handicapped persons, discriminating against prohibited: Chapter 70.84 RCW.

Collective bargaining with employees of city owned utilities: RCW 35.22.350.

Department of labor and industries: Chapter 43.22 RCW.

Electrical advisory board: RCW 19.28.065.

Elevators, lifting devices and moving walks: Chapter 70.87 RCW.

Employee benefit plans when private utility acquired: RCW 54.04.130.

Employee welfare trust funds: Chapter 48.52 RCW.

Employment agencies: Chapter 19.31 RCW.

Industrial products of prisoners: RCW 72.01.150, Chapter 72.60 RCW.

Job protection for members of state militia: RCW 38.40.050.

Labor and employment of prisoners: Chapter 72.64 RCW.

Lien of employees for contributions to benefit plans: Chapter 60.76 RCW.

Marine employee commission: Chapter 47.64 RCW.

Occupational and environmental research facility at University of Washington: RCW 28B.20.450–28B.20.458.

Promotional printing contracts of apple advertising, fruit, dairy products commissions—Conditions of employment: RCW 15.24.086.

Public employees' collective bargaining, arbitration of disputes: RCW 41.56.100.

Public employment: Title 41 RCW.

Schools and colleges, employee insurance programs: RCW 28A.58.420, 28B.10.660.

Sheriff's office, civil service: Chapter 41.14 RCW.

Unemployment compensation: Title 50 RCW.

Unfair practices—Consumer protection—Act does not impair labor organizations: RCW 19.86.070.

Urban renewal law: Chapter 35.81 RCW.

Workmen's compensation: Title 51 RCW.

Youth development and conservation corps: RCW 43.51.500.

Chapter 49.04 APPRENTICESHIP

Sections

- 49.04.010 Apprenticeship council created—Composition—Terms—Compensation—Duties.
- 49.04.030 Supervisor of apprenticeship—Duties.
- 49.04.040 Local and state joint apprenticeship committees.
- 49.04.050 Standards for apprenticeship agreements.
- 49.04.060 Apprenticeship agreements.
- 49.04.070 Limitation.
- 49.04.080 On-the-job training agreements and projects—Supervisor to promote.
- 49.04.090 On-the-job training agreements and projects—Agreements with federal agencies.
- 49.04.100 Minority race representation in apprenticeship programs—Required—Ratio.
- 49.04.110 Minority race representation in apprenticeship programs—Noncompliance.
- 49.04.120 Minority race representation—Community colleges, vocational, or high schools to enlist minority race representation in apprenticeship programs.
- 49.04.130 Minority race representation—Employer and employee organizations, apprenticeship council and committees, etc., to enlist minority race representation in apprenticeship programs.
- 49.04.900 Severability—1941 c 231.
- 49.04.910 Chapter not affected by certain laws against discrimination in employment because of age.

Apprenticeship agreements, inmates of state school for girls: RCW 72.20.090.

Child labor: RCW 26.28.060, 26.28.070.

Employer of minor must permit school attendance: RCW 28A.28.110.

Employment permits for minors: Chapter 28A.28 RCW.

License to practice barbering—When final examination not required: RCW 18.15.045.

49.04.010 Apprenticeship council created—Composition—Terms—Compensation—Duties. The director of labor and industries shall appoint an apprenticeship council, composed of three representatives each from employer and employee organizations, respectively. The terms of office of the members of the apprenticeship council first appointed by the director of labor and industries shall be as follows: One representative each of employers and employees shall be appointed for one year, two years, and three years, respectively. Thereafter, each member shall be appointed for a term of three years. Each member shall hold office until his successor is appointed and has qualified and any vacancy shall be filled by appointment for the

unexpired portion of the term. The state official who has been designated by the state board for vocational education as being in charge of trade and industrial education and the state official who has immediate charge of the state public employment service shall ex officio be members of said council, without vote. Each member of the council, not otherwise compensated by public moneys, shall be reimbursed for transportation and expenses and shall be paid not more than twenty-five dollars for each day spent in attendance at meetings of the council. The apprenticeship council with the consent of employee and employer groups shall: (1) Establish standards for apprenticeship agreements in conformity with the provisions of this chapter; (2) issue such rules and regulations as may be necessary to carry out the intent and purposes of this chapter; and (3) perform such other duties as are hereinafter imposed. Not less than once a year the apprenticeship council shall make a report through the director of labor and industries on November 1, of its activities and findings to the legislature which shall be made available to the public. [1967 c 6 § 1; 1961 c 114 § 1; 1941 c 231 § 1; Rem. Supp. 1941 § 7614-3. Formerly RCW 49.04.010 and 49.04.020.]

Division of employment service created: RCW 50.08.020.

Vocational education in public schools: Chapter 28A.09 RCW.

49.04.030 Supervisor of apprenticeship—Duties.

Subject to the confirmation of the state apprenticeship council by a majority vote, the director of labor and industries shall appoint and deputize an assistant director to be known as the supervisor of apprenticeship. Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor shall: (1) Encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter, and in harmony with the policies of the United States department of labor; (2) act as secretary of the apprenticeship council and of state joint apprenticeship committees; (3) when so authorized by the apprenticeship council, register such apprenticeship agreements as are in the best interests of the apprentice and conform to the standards established by or in accordance with this chapter; (4) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship; (5) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and who (6) may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of the state board for vocational education and its local recognized agency for vocational education. The director of labor and industries is authorized to appoint such

other personnel as may be necessary to aid the apprenticeship council and the supervisor of apprenticeship in the execution of their functions under this chapter. [1961 c 114 § 2; 1941 c 231 § 2; Rem. Supp. 1941 § 7614-4.]

Adult vocational rehabilitation and placement: Chapter 28A.10 RCW.

Vocational education in public schools: Chapter 28A.09 RCW.

49.04.040 Local and state joint apprenticeship committees. Local and state joint apprenticeship committees may be approved, in any trade or group of trades, in cities or trade areas, by the apprenticeship council, whenever the apprentice training needs of such trade or group of trades justifies such establishment. Such local or state joint apprenticeship committees shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective local or state employer and employee organizations in such trade or group of trades. In a trade or group of trades in which there is no bona fide employer or employee organization, the joint committee shall be composed of persons known to represent the interests of employer and of employees respectively, or a state joint apprenticeship committee may be approved as, or the council may act itself as the joint committee in such trade or group of trades. Subject to the review of the council and in accordance with the standards established by this chapter and by the council, such committees shall devise standards for apprenticeship agreements and give such aid as may be necessary in their operation in their respective trades and localities. [1941 c 231 § 3; Rem. Supp. 1941 § 7614-5.]

49.04.050 Standards for apprenticeship agreements. Standards of apprenticeship agreements are as follows:

(1) A statement of the trade or craft to be taught and the required hours for completion of apprenticeship which shall be not less than four thousand hours of reasonably continuous employment.

(2) A statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

(3) A statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction which instruction shall be not less than one hundred forty-four hours per year.

(4) A statement of the age of the apprentice which may not be less than sixteen years of age.

(5) A statement of the progressively increasing scale of wages to be paid the apprentice.

(6) Provision for a period of probation during which the apprenticeship council or the supervisor of apprenticeship may terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period the apprenticeship council, or the supervisor of apprenticeship, under the procedure approved by the council, shall be empowered to terminate the apprenticeship agreement in accordance with the provisions of such agreement.

(7) Provision that the services of the supervisor and the apprenticeship council may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

(8) Provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement he may transfer such obligation to another employer.

(9) Such additional standards as may be prescribed in accordance with the provisions of this chapter. [1961 c 114 § 3; 1941 c 231 § 4; Rem. Supp. 1941 § 7614-6.]

49.04.060 Apprenticeship agreements. For the purposes of this chapter an apprenticeship agreement is:

(1) An individual written agreement between an employer and apprentice, or (2) a written agreement between an employer, or an association of employers, and an organization of employees describing conditions of employment for apprentices, or (3) a written statement describing conditions of employment for apprentices in a plant where there is no bona fide employee organization.

All such agreements shall conform to the basic standards and other provisions of this chapter. [1941 c 231 § 5; Rem. Supp. 1941 § 7614-7.]

49.04.070 Limitation. The provisions of this chapter shall apply to a person, firm, corporation or craft only after such person, firm, corporation or craft has voluntarily elected to conform with its provisions. [1941 c 231 § 6; Rem. Supp. 1941 § 7614-8.]

49.04.080 On-the-job training agreements and projects—Supervisor to promote. Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor of apprenticeship shall encourage and promote the making of such other types of on-the-job training agreements and projects, in addition to apprenticeship agreements, as he in his discretion shall find meritorious. [1963 c 172 § 1.]

49.04.090 On-the-job training agreements and projects—Agreements with federal agencies. The director of labor and industries shall have authority to enter into and perform, through the supervisor of apprenticeship, agreements with appropriate federal departments or agencies for the development, administration and servicing of on-the-job training projects. Further, the director of labor and industries, through the supervisor of apprenticeship, shall have power to receive and administer funds provided by the federal government for such purposes. [1963 c 172 § 2.]

49.04.100 Minority race representation in apprenticeship programs—Required—Ratio. Joint apprenticeship programs entered into under authority of chapter 49.04 RCW and which receive any state assistance in instructional or other costs, shall as a part thereof include entrance of minority races in such program, when available, in a ratio not less than the ratio

which the minority race represents in population to the actual population in the city or trade area concerned, based on current census figures issued by the planning and community affairs agency with the ultimate goal of obtaining the proportionate ratio of representation in the total program membership. Where minimum standards have been set for entering upon any such apprenticeship program, this minority race representation shall be filled when minority race applicants have met such minimum standards and irrespective of individual ranking among all applicants seeking to enter the program: *Provided*, That nothing in RCW 49.04.100 through 49.04.130 will affect the total number of entrants into the apprenticeship program or modify the dates of entrance both as established by the joint apprenticeship committee. Minority race for the purposes of RCW 49.04.100 through 49.04.130 shall include Blacks, Mexican Americans or Spanish Americans, Orientals and Indians or Filipinos. [1969 ex.s. c 183 § 2.]

~~Purpose—Construction—~~1969 ex.s. c 183: "It is the policy of the legislature and the purpose of this act to provide every citizen in this state a reasonable opportunity to enjoy employment and other associated rights, benefits, privileges, and to help citizens of minority races realize in a greater measure the goals upon which this nation and this state were founded. All the provisions of this act shall be liberally construed to achieve these ends, and administered and enforced with a view to carry out the above declaration of policy." [1969 ex.s. c 183 § 1.]

~~Report—~~1969 ex.s. c 183: "The department of labor and industries shall report to the 1970 session of the legislature on the implementation of the minority race representation in apprenticeship programs as provided for in this act." [1969 ex.s. c 183 § 6.]

~~Severability—~~1969 ex.s. c 183: "If any provision of this 1969 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 183 § 8.]

The foregoing annotations apply to RCW 49.04.100-49.04.130.

49.04.110 Minority race representation in apprenticeship programs—Noncompliance. When it shall appear to the department of labor and industries that any apprenticeship program referred to in RCW 49.04.100 has failed to comply with the minority race representation requirement hereinabove in such section referred to by January 1, 1970, which fact shall be determined by reports the department may request or in such other manner as it shall see fit, then the same shall be deemed prima facie evidence of noncompliance with RCW 49.04.100 through 49.04.130 and thereafter no state funds or facilities shall be expended upon such program: *Provided*, That prior to such withdrawal of funds evidence shall be received and state funds or facilities shall not be denied if there is a showing of a genuine effort to comply with the provisions of RCW 49.04.100 through 49.04.130 as to entrance of minority races into the program. The director shall notify the appropriate federal authorities if there is noncompliance with the minority race representation qualification under any apprenticeship program as provided for in RCW 49.04.100 through 49.04.130. [1969 ex.s. c 183 § 3.]

49.04.120 Minority race representation—Community colleges, vocational, or high schools to enlist minority race representation in apprenticeship programs. Every community college, vocational school, or high school

carrying on a program of vocational education shall make every effort to enlist minority race representation in the apprenticeship programs within the state and are authorized to carry out such purpose in such ways as they shall see fit. [1969 ex.s. c 183 § 4.]

49.04.130 Minority race representation—Employer and employee organizations, apprenticeship council and committees, etc., to enlist minority race representation in apprenticeship programs. Every employer and employee organization as well as the apprenticeship council and local and state apprenticeship committees and vocational schools shall make every effort to enlist minority race representation in the apprenticeship programs of the state and shall be aided therein by the department of labor and industries insofar as such department may be able to so do without undue interference with its other powers and duties. In addition, the legislature, in fulfillment of the public welfare, mandates those involved in apprenticeship training with the responsibility of making every effort to see that minority race representatives in such programs pursue the same to a successful conclusion thereof. [1969 ex.s. c 183 § 5.]

49.04.900 Severability—1941 c 231. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons and circumstances, shall not be affected thereby. [1941 c 231 § 8; no RRS.]

49.04.910 Chapter not affected by certain laws against discrimination in employment because of age. The amendments made by chapter 100, Laws of 1961 shall not be construed as modifying chapter 231, Laws of 1941 as amended, or as applying to any standards established thereunder or employment pursuant to any bona fide agreements entered into thereunder. [1961 c 100 § 6.]

Reviser's note: (1) Chapter 100, Laws of 1961 amended RCW 49.60.180, 49.60.190, 49.60.200 and reenacted RCW 49.60.310 to include age as an element of discrimination, and such chapter added a new section codified as RCW 49.44.090 relating to unfair practices in employment because of age.

(2) Chapter 231, Laws of 1941 is the apprenticeship law codified in chapter 49.04 RCW.

Chapter 49.08 ARBITRATION OF DISPUTES

Sections

| | |
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| 49.08.010 | Duty of director—Mediation—Board of arbitration selected—Board's findings final. |
| 49.08.020 | Procedure for arbitration. |
| 49.08.030 | Service of process. |
| 49.08.040 | Compensation and expenses of arbitrators. |
| 49.08.050 | Failure to arbitrate—Statement of facts—Publicity. |
| 49.08.060 | Tender on exhaustion of available funds. |

Arbitration: Chapter 7.04 RCW.

Collective bargaining with employees of city owned utilities: RCW 35.22.350.

Marine employee commission: Chapter 47.64 RCW.

Supervisor of industrial relations: RCW 43.22.260.

49.08.010 Duty of director—Mediation—Board of arbitration selected—Board's findings final. It shall be the duty of the director of labor and industries upon application of any employer or employee having differences, as soon as practicable, to visit the location of such differences and to make a careful inquiry into the cause thereof and to advise the respective parties, what, if anything, ought to be done or submitted to by both to adjust said dispute and should said parties then still fail to agree to a settlement through said director, then said director shall endeavor to have said parties consent in writing to submit their differences to a board of arbitrations to be chosen from citizens of the state as follows, to wit: Said employer shall appoint one and said employees acting through a majority, one, and these two shall select a third, these three to constitute the board of arbitration and the findings of said board of arbitration to be final. [1903 c 58 § 1; RRS § 7667.]

49.08.020 Procedure for arbitration. The proceedings of said board of arbitration shall be held before the director of labor and industries who shall act as moderator or chairman, without the privilege of voting, and who shall keep a record of the proceedings, issue subpoenas and administer oaths to the members of said board, and any witness said board may deem necessary to summon. [1903 c 58 § 2; RRS § 7668.]

49.08.030 Service of process. Any notice or process issued by the board herein created, shall be served by any sheriff, coroner or constable to whom the same may be directed, or in whose hands the same may be placed for service. [1903 c 58 § 3; RRS § 7669.]

49.08.040 Compensation and expenses of arbitrators. Such arbitrators shall receive five dollars per day for each day actually engaged in such arbitration and the necessary traveling expenses to be paid upon certificates of the director of labor and industries out of the fund appropriated for the purpose or at the disposal of the department of labor and industries applicable to such expenditure. [1903 c 58 § 4; RRS § 7670.]

49.08.050 Failure to arbitrate—Statement of facts—Publicity. Upon the failure of the director of labor and industries, in any case, to secure the creation of a board of arbitration, it shall become his duty to request a sworn statement from each party to the dispute of the facts upon which their dispute and their reasons for not submitting the same to arbitration are based. Any sworn statement made to the director of labor and industries under this provision shall be for public use and shall be given publicly in such newspapers as desire to use it. [1903 c 58 § 5; RRS § 7671.]

49.08.060 Tender on exhaustion of available funds. There is hereby appropriated out of the state treasury from funds not otherwise appropriated the sum of three thousand dollars, or so much thereof as may be necessary, to carry out the provisions of this chapter. In case the funds herein provided are exhausted and either party to a proposed arbitration shall tender the necessary

expenses for conducting said arbitration, then it shall be the duty of the director of labor and industries to request the opposite party to arbitrate such differences in accordance with the provisions of this chapter. [1903 c 58 § 6; RRS § 7672.]

**Chapter 49.12
INDUSTRIAL WELFARE**

Sections

- 49.12.005 Definitions.
- 49.12.010 Declaration.
- 49.12.020 Conditions of employment—Wages.
- 49.12.031 Industrial welfare committee.
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- 49.12.035 Meetings of industrial welfare committee.
- 49.12.041 Investigation of wages, hours and working conditions—Statements, inspections and examinations authorized.
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- 49.12.091 Investigation information to be furnished committee—Findings—Rules prescribing minimum wages, working conditions.
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- 49.12.200 Women may pursue any calling open to men.
- 49.12.900 Severability—1973 2nd ex.s. c 16.

Reviser's note: Throughout this chapter, the words "the committee" have been substituted for "the industrial welfare commission" or "the commission"

The industrial welfare commission was abolished and its powers and duties transferred to a new agency by the administrative code of 1921. In particular 1921 c 7 § 135 abolished the commission while 1921 c 7 § 82 created an unnamed committee "which shall have the power and it shall be its duty:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the industrial welfare commission."

1921 c 7 § 82 was codified by the 1941 Code Committee as RCW 43.22.280, wherein they revised the wording of the session law to designate the unnamed committee as the "Industrial Welfare Committee" The committee is apparently commonly known by that name, but such designation has no foundation in the statutes.

Child labor: RCW 26.28.060, 26.28.070.

Employer of minor must permit school attendance: RCW 28A.28.110.

Employment permits for minors: Chapter 28A.28 RCW.

Food and beverage establishment workers' permits: Chapter 69.06 RCW.

Hours of labor: Chapter 49.28 RCW.

49.12.005 Definitions. For the purposes of this chapter:

(1) The term "department" means the department of labor and industries.

(2) The term "director" means the director of the department of labor and industries, or his designated representative.

(3) The term "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees.

(4) The term "employee" means an employee who is employed in the business of his employer whether by way of manual labor or otherwise.

(5) The term "conditions of labor" shall mean and include the conditions of rest and meal periods for employees including provisions for personal privacy, practices, methods and means by or through which labor or services are performed by employees and includes bona fide physical qualifications in employment, but shall not include conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health administered by the department.

(6) For the purpose of *this 1973 amendatory act a minor is defined to be a person of either sex under the age of eighteen years.

(7) The term "committee" shall mean the industrial welfare committee. [1973 2nd ex.s. c 16 § 1.]

***Reviser's note:** "this 1973 amendatory act" [1973 2nd ex.s. c 16] consists of amendments to RCW 43.22.260, 43.22.270, 43.22.280, 49.12.010, 49.12.020, 49.12.050, 49.12.110 and 49.12.170, to new sections codified as RCW 49.12.005, 49.12.035, 49.12.041, 49.12.091, 49.12.101, 49.12.105, 49.12.121, 49.12.161, 49.12.185, 49.12.187, and 49.12.900, and to the repeal of RCW 49.12.030, 49.12.040, 49.12.060-49.12.100, 49.12.120, 49.12.160, 49.12.190 and 49.12.215-49.12.230.

49.12.010 Declaration. The welfare of the state of Washington demands that all employees be protected from conditions of labor which have a pernicious effect on their health. The state of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect. [1973 2nd ex.s. c 16 § 2; 1913 c 174 § 1; RRS § 7623.]

49.12.020 Conditions of employment—Wages. It shall be unlawful to employ any person in any industry or occupation within the state of Washington under conditions of labor detrimental to their health; and it shall be unlawful to employ workers in any industry within the state of Washington at wages which are not adequate for their maintenance. [1973 2nd ex.s. c 16 § 3; 1913 c 174 § 2; RRS § 7624.]

49.12.031 Industrial welfare committee. See RCW 43.22.280.

49.12.033 Administration and enforcement of chapter by director of labor and industries. See RCW 43.22.270(5).

49.12.035 Meetings of industrial welfare committee. The industrial welfare committee shall meet at least annually and at such other times as may be reasonably necessary for the purpose of reviewing rules and regulations fixing minimum wages and standards, conditions

and hours of labor and for the purpose of proposing the amendment, repeal or adoption of new rules and regulations. [1973 2nd ex.s. c 16 § 10.]

49.12.041 Investigation of wages, hours and working conditions—Statements, inspections and examinations authorized. It shall be the responsibility of the industrial welfare committee, with the aid and assistance of the director, to investigate the wages, hours and conditions of employment of all employees, including minors, except as may otherwise be provided in *this 1973 amendatory act. The director, or his authorized representative, shall have full authority to require statements from all employers, relative to wages, hours and working conditions and to inspect the books, records and physical facilities of all employers subject to *this 1973 amendatory act. Such examinations shall take place within normal working hours, within reasonable limits and in a reasonable manner. [1973 2nd ex.s. c 16 § 5.]

*Reviser's note: "this 1973 amendatory act", see note following RCW 49.12.005.

49.12.050 Employer's record of employees. Every employer shall keep a record of the names of all employees employed by him, and shall on request permit the committee or any of its members or authorized representatives to inspect such record. [1973 2nd ex.s. c 16 § 14; 1913 c 174 § 7; RRS § 7626.]

49.12.091 Investigation information to be furnished committee—Findings—Rules prescribing minimum wages, working conditions. After an investigation has been conducted by the director of labor and industries of wages, hours and conditions of labor subject to *this 1973 amendatory act, the industrial welfare committee shall be furnished with all information relative to such investigation of wages, hours and working conditions, including current statistics on wage rates in all occupations subject to the provisions of *this 1973 amendatory act. Within a reasonable time thereafter, if the committee finds that in any occupation, trade or industry, subject to *this 1973 amendatory act, the wages paid to employees are inadequate to supply the necessary cost of living, but not to exceed the state minimum wage as prescribed in RCW 49.46.020, as now or hereafter amended, or that the conditions of labor are detrimental to the health of employees, the committee shall have authority to prescribe rules and regulations for the purpose of adopting minimum wages for occupations not otherwise governed by minimum wage requirements fixed by state or federal statute, or a rule or regulation promulgated pursuant to such statute, and, at the same time have the authority to prescribe rules and regulations fixing standards, conditions and hours of labor for the protection of the safety, health and welfare of employees for all or specified occupations subject to *this 1973 amendatory act. Thereafter, the committee shall conduct a public hearing in accordance with the procedures of the administrative procedure act, chapter 34.04

RCW, for the purpose of the adoption of rules and regulations fixing minimum wages and standards, conditions and hours of labor subject to the provisions of *this act. After such rules become effective, copies thereof shall be supplied to employers who may be affected by such rules and such employers shall post such rules, where possible, in such place or places, reasonably accessible to all employees of such employer. After the effective date of such rules, it shall be unlawful for any employer in any occupation subject to *this 1973 amendatory act to employ any person for less than the rate of wages specified in such rules or under conditions and hours of labor prohibited for any occupation specified in such rules: *Provided*, That this section shall not apply to sheltered workshops. [1973 2nd ex.s. c 16 § 6.]

*Reviser's note: "this 1973 amendatory act", "this act", see note following RCW 49.12.005.

49.12.101 Hearings. Whenever wages, standards, conditions and hours of labor have been established by rule and regulation of the committee, the committee may upon application of either employers or employees conduct a public hearing for the purpose of the adoption, amendment or repeal of rules and regulations promulgated under the authority of *this 1973 amendatory act. [1973 2nd ex.s. c 16 § 7.]

*Reviser's note: "this 1973 amendatory act", see note following RCW 49.12.005.

49.12.105 Variance orders—Application—Issuance—Contents—Termination. An employer may apply to the committee for an order for a variance from any rule or regulation establishing a standard for wages, hours, or conditions of labor promulgated by the committee under this chapter. The committee shall issue an order granting a variance if it determines or decides that the applicant for the variance has shown good cause for the lack of compliance. Any order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, standards and processes which he must adopt and utilize to the extent they differ from the standard in question. At any time the committee may terminate and revoke such order, provided the employer was notified by the committee of the termination at least thirty days prior to said termination. [1973 2nd ex.s. c 16 § 8.]

49.12.110 Exceptions to minimum scale—Special certificate or permit. For any occupation in which a minimum wage has been established, the committee through its secretary may issue to an employer, a special certificate or permit for an employee who is physically or mentally defective or crippled by age or otherwise, or to a trainee or learner not otherwise subject to the jurisdiction of the apprenticeship council, a special certificate or permit authorizing the employment of such employee for a wage less than the legal minimum wage; and the committee shall fix the minimum wage for said person, such special certificate or permit to be issued only in such cases as the committee may decide the same is applied for in good faith and that such certificate or permit shall be in force for such

length of time as the said committee shall decide and determine is proper. [1973 2nd ex.s. c 16 § 13; 1913 c 174 § 13; RRS § 7632.]

49.12.121 Wages and working conditions of minors—Special rules—Work permits. The committee, or the director, may at any time inquire into wages, hours, and conditions of labor of minors employed in any trade, business or occupation in the state of Washington and may adopt special rules for the protection of the safety, health and welfare of minor employees, such minimum wages not to exceed the state minimum wage as prescribed in RCW 49.46.020, as now or hereafter amended. The committee shall issue work permits to employers for the employment of minors, after being assured the proposed employment of a minor meets the standards set forth concerning the health, safety and welfare of minors as set forth in the rules and regulations promulgated by the committee. No minor person shall be employed in any occupation, trade or industry subject to *this 1973 amendatory act, unless a work permit has been properly issued, with the consent of the parent, guardian or other person having legal custody of the minor and with the approval of the school which such minor may then be attending. [1973 2nd ex.s. c 16 § 15.]

***Reviser's note:** "this 1973 amendatory act", see note following RCW 49.12.005.

49.12.123 Work permits for minors required. In implementing state policy to assure the attendance of children in the public schools it shall be required of any person, firm or corporation employing any minor under the age of eighteen years to obtain a work permit as set forth in RCW 49.12.120 and keep such permit on file during the employment of such minor, and upon termination of such employment of such minor to return such permit to the industrial welfare committee of the department of labor and industries. [1973 c 51 § 3.]

Severability—1973 c 51: See note following RCW 28A.27.010.

49.12.125 Director to furnish statistics. Upon the request of the committee the director of labor and industries of the state of Washington shall furnish to the committee such statistics as the committee may require. [1913 c 174 § 15; RRS § 7634. Formerly RCW 49.12.040, part.]

49.12.130 Witnesses protected—Penalty. Any employer who discharges, or in any other manner discriminates against any employee because such employee has testified or is about to testify, or because such employer believes that said employee may testify in any investigation or proceedings relative to the enforcement of RCW 49.12.010 through 49.12.180, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of from twenty-five dollars to one hundred dollars for each such misdemeanor. [1913 c 174 § 16; RRS § 7635.]

49.12.140 Complaints of noncompliance. Any worker or the parent or guardian of any minor to whom RCW 49.12.010 through 49.12.180 applies may complain to the committee that the wages paid to the workers are less than the minimum rate and the committee shall investigate the same and proceed under RCW 49.12.010 through 49.12.180 in behalf of the worker. [1913 c 174 § 17 1/2; RRS § 7637.]

49.12.150 Civil action to recover underpayment. If any employee shall receive less than the legal minimum wage, except as hereinbefore provided in RCW 49.12.110, said employee shall be entitled to recover in a civil action the full amount of the legal minimum wage as herein provided for, together with costs and attorney's fees to be fixed by the court, notwithstanding any agreement to work for such lesser wage. In such action, however, the employer shall be credited with any wages which have been paid upon account. [1913 c 174 § 18; RRS § 7638.]

49.12.161 Appeals. Any person, firm, or corporation feeling aggrieved of any action taken or decision made by an officer or employee of the department in the enforcement of *this act may appeal such action or decision to the industrial welfare committee by filing notice of such appeal with the industrial welfare committee within thirty days of such action or decision. Such appeal shall be done in accordance with the rules of procedure for the process of appeals, such rules to be promulgated by the industrial welfare committee. The notice of appeal shall suspend such action or decision pending the determination of the appeal by the industrial welfare committee. The said committee shall review the record, accept and consider written briefs and may hear oral arguments regarding the appeal. The said committee shall decide the questions raised by the appeal on the merits and shall notify all parties in writing of its decision, which shall be final and binding upon all parties, subject to judicial review at the instance of a losing party pursuant to chapter 34.04 RCW, the administrative procedure act. [1973 2nd ex.s. c 16 § 9.]

***Reviser's note:** "this act", see note following RCW 49.12.005.

49.12.170 Penalty. Any employer employing any person for whom a minimum wage or standards, conditions, and hours of labor have been specified, at less than said minimum wage, or under standards, or conditions of labor or at hours of labor prohibited by the rules and regulations of the committee; or violating any other of the provisions of *this 1973 amendatory act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars. [1973 2nd ex.s. c 16 § 16; 1913 c 174 § 17; RRS § 7636.]

***Reviser's note:** "this 1973 amendatory act", see note following RCW 49.12.005.

Witnesses protected—Penalty: RCW 49.12.130.

49.12.175 Wage discrimination due to sex prohibited—Penalty—Civil recovery. Any employer in this state, employing both males and females, who shall discriminate in any way in the payment of wages as between sexes or who shall pay any female a less wage, be it time or piece work, or salary, than is being paid to males similarly employed, or in any employment formerly performed by males, shall be guilty of a misdemeanor. If any female employee shall receive less compensation because of being discriminated against on account of her sex, and in violation of this section, she shall be entitled to recover in a civil action the full amount of compensation that she would have received had she not been discriminated against. In such action, however, the employer shall be credited with any compensation which has been paid to her upon account. A differential in wages between employees based in good faith on a factor or factors other than sex shall not constitute discrimination within the meaning of RCW 49.12.010 through 49.12.180. [1943 c 254 § 1; Rem. Supp. 1943 § 7636-1. Formerly RCW 49.12.210.]

49.12.180 Biennial report. The committee shall biennially make a report to the governor and state legislature of its investigations and proceedings. [1913 c 174 § 20; RRS § 7640.]

49.12.185 Exemptions from chapter. *This 1973 amendatory act shall not apply to newspaper vendors or carriers and domestic or casual labor in or about private residences and agricultural labor as defined in RCW 50.04.150, as now or hereafter amended. [1973 2nd ex.s. c 16 § 17.]

*Reviser's note: "This 1973 amendatory act", see note following RCW 49.12.005.

49.12.187 Collective bargaining rights not affected. This chapter shall not be construed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages or standards or conditions of employment. [1973 2nd ex.s. c 16 § 18.]

49.12.200 Women may pursue any calling open to men. That hereafter in this state every avenue of employment shall be open to women; and any business, vocation, profession and calling followed and pursued by men may be followed and pursued by women, and no person shall be disqualified from engaging in or pursuing any business, vocation, profession, calling or employment or excluded from any premises or place of work or employment on account of sex. [1963 c 229 § 1; 1890 p 519 § 1; RRS § 7620.]

Qualifications of electors: State Constitution Art. 6 § 1 (Amendment 5).

49.12.900 Severability—1973 2nd ex.s. c 16. If any provision of this 1973 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision

to other persons or circumstances is not affected. [1973 2nd ex.s. c 16 § 20.]

Chapter 49.17 WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT

| Sections | Purpose. |
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| 49.17.060 | Employers—General safety standard—Compliance. |
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| 49.17.910 | Severability—1973 c 80. |

49.17.010 Purpose. The legislature finds that personal injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of benefits under the industrial insurance act. Therefore, in the public interest for the welfare of the people of the state of Washington and in order to assure, insofar as may reasonably be possible, safe and healthful working conditions for every man and woman working in the state of Washington, the legislature in the exercise of its police power, and in keeping with the mandates of Article II, section 35 of the state Constitution, declares its purpose by the provisions of this chapter to create, maintain, continue, and enhance the industrial safety and health program of the state, which program shall equal or exceed the standards prescribed by the Occupational

Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590). [1973 c 80 § 1.]

49.17.020 Definitions. For the purposes of this chapter:

(1) The term "director" means the director of the department of labor and industries, or his designated representative.

(2) The term "department" means the department of labor and industries.

(3) The term "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: *Provided*, That any person, partnership, or business entity not having employees, and who is covered by the industrial insurance act shall be considered both an employer and an employee.

(4) The term "employee" means an employee of an employer who is employed in the business of his employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his personal labor for an employer under this chapter whether by way of manual labor or otherwise.

(5) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(6) The term "safety and health standard" means a standard which requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(7) The term "work place" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control, and includes, but is not limited to, all work places covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

(8) The term "working day" means a calendar day, except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050, as now or hereafter amended, and for the purposes of the computation of time within which an act is to be done under the provisions of this chapter, shall be computed by excluding the first working day and including the last working day. [1973 c 80 § 2.]

49.17.030 Application of chapter—Fees and charges. This chapter shall apply with respect to employment performed in any work place within the state. The department of labor and industries shall provide by rule for a schedule of fees and charges to be paid by

each employer subject to this chapter who is not subject to or obtaining coverage under the industrial insurance laws and who is not a self-insurer. The fees and charges collected shall be for the purpose of defraying such employer's pro rata share of the expenses of enforcing and administering this chapter. [1973 c 80 § 3.]

49.17.040 Rules and regulations—Authority—Procedure. The director shall make, adopt, modify, and repeal rules and regulations governing safety and health standards for conditions of employment as authorized by this chapter after a public hearing in conformance with the administrative procedure act and the provisions of this chapter. At least thirty days prior to such public hearing, the director shall cause public notice of such hearing to be made in newspapers of general circulation in this state, of the date, time, and place of such public hearing, along with a general description of the subject matter of the proposed rules and information as to where copies of any rules and regulations proposed for adoption may be obtained and with a solicitation for recommendations in writing or suggestions for inclusion or changes in such rules to be submitted not later than five days prior to such public hearing. Any preexisting rules adopted by the department of labor and industries relating to health and safety standards in work places subject to the jurisdiction of the department shall remain effective insofar as such rules are not inconsistent with the provisions of this chapter. [1973 c 80 § 4.]

49.17.050 Rules and regulations—Guidelines—Standards. In the adoption of rules and regulations under the authority of this chapter, the director shall:

(1) Provide for the preparation, adoption, amendment, or repeal of rules and regulations of safety and health standards governing the conditions of employment of general and special application in all work places;

(2) Provide for the adoption of occupational health and safety standards which are at least as effective as those adopted or recognized by the United States secretary of labor under the authority of the Occupational Safety and Health Act of 1970 (Public Law 91-596; 84 Stat. 1590);

(3) Provide a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards at their work places and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(4) Provide for the promulgation of health and safety standards and the control of conditions in all work places concerning gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life; any such standards shall require where appropriate the use

of protective devices or equipment and for monitoring or measuring any such gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents;

(5) Provide for appropriate reporting procedures by employers with respect to such information relating to conditions of employment which will assist in achieving the objectives of this chapter;

(6) Provide for the frequency, method, and manner of the making of inspections of work places without advance notice; and,

(7) Provide for the publication and dissemination to employers, employees, and labor organizations and the posting where appropriate by employers of informational, education, or training materials calculated to aid and assist in achieving the objectives of this chapter;

(8) Provide for the establishment of new and the perfection and expansion of existing programs for occupational safety and health education for employers and employees, and, in addition institute methods and procedures for the establishment of a program for voluntary compliance solely through the use of advice and consultation with employers and employees with recommendations including recommendations of methods to abate violations relating to the requirements of this chapter and all applicable safety and health standards and rules and regulations promulgated pursuant to the authority of this chapter;

(9) Provide for the adoption of safety and health standards requiring the use of safeguards in trenches and excavations and around openings of hoistways, hatchways, elevators, stairways, and similar openings;

(10) Provide for the promulgation of health and safety standards requiring the use of safeguards for all vats, pans, trimmers, cut off, gang edger, and other saws, planers, presses, formers, cogs, gearing, belting, shafting, coupling, set screws, live rollers, conveyors, mangles in laundries, and machinery of similar description, which can be effectively guarded with due regard to the ordinary use of such machinery and appliances and the danger to employees therefrom, and with which the employees of any such work place may come in contact while in the performance of their duties and prescribe methods, practices, or processes to be followed by employers which will enhance the health and safety of employees in the performance of their duties when in proximity to machinery or appliances mentioned in this subsection. [1973 c 80 § 5.]

49.17.060 Employers—General safety standard—Compliance. Each employer:

(1) Shall furnish to each of his employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his employees: *Provided*, That no citation or order assessing a penalty shall be issued to any employer solely under the authority of this subsection except where no applicable rule or regulation has been adopted by the department covering the unsafe or unhealthful condition of employment at the work place; and

(2) Shall comply with the rules, regulations, and orders promulgated under this chapter. [1973 c 80 § 6.]

49.17.070 Right of entry—Inspections and investigations—Subpoenas—Contempt. The director, or his authorized representative, in carrying out his duties under this chapter, upon the presentation of appropriate credentials to the owner, manager, operator, or agent in charge, is authorized:

(1) To enter without delay and at all reasonable times the factory, plant, establishment, construction site, or other area, work place, or environment where work is performed by an employee of an employer; and

(2) To inspect, survey, and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such work place and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee;

(3) In making inspections and making investigations under this chapter the director may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the superior courts. In the case of contumacy, failure, or refusal of any person to obey such an order, any superior court within the jurisdiction of which such person is found, or resides, or transacts business, upon the application of the director, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof. [1973 c 80 § 7.]

49.17.080 Variances from safety and health standards—Application—Contents—Procedure. (1) Any employer may apply to the director for a temporary order granting a variance from any safety and health standard promulgated by rule or regulation under the authority of this chapter. Such temporary order shall be granted only if the employer files an application which meets the requirements of subsection (2) of this section and establishes that the employer is unable to comply with a safety or health standard because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the safety and health standard or because necessary construction or alteration of facilities cannot be completed by the effective date of such safety and health standard, that he is taking all available steps to safeguard his employees against the hazards covered by the safety and health standard, and he has an effective program for coming into compliance with such safety and health standard as quickly as practicable. Any temporary order issued under the authority of this subsection shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the safety and health standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing upon request of the employer

or any affected employee. The name of any affected employee requesting a hearing under the provisions of this subsection shall be confidential and shall not be disclosed without the consent of such employee. The director may issue one interim order to be effective until a determination is made or a decision rendered if a hearing is demanded. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter, except that such an order may be renewed not more than twice, so long as the requirements of this subsection are met and if an application for renewal is filed at least ninety days prior to the expiration date of the order. No renewal of a temporary order may remain in effect for longer than one hundred eighty days.

(2) An application for a temporary order under this section shall contain:

(a) A specification of the safety and health standard or portion thereof from which the employer seeks a variance;

(b) A representation by the employer, supported by representations from qualified persons having first hand knowledge of the facts represented, that he is unable to comply with the safety and health standard or portion thereof and a detailed statement of the reasons therefor;

(c) A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard;

(d) A statement as to when the employer expects to be able to comply with the standard or portion thereof and what steps he has taken and will take, with dates specified, to come into compliance with the standard; and

(e) A certification that the employer, by the date of mailing or delivery of the application to the director, has informed his employees of the application by providing a copy thereof to his employees or their authorized representative by posting a copy of such application in a place or places reasonably accessible to all employees or by other appropriate means of notification and by mailing a copy to the authorized representative of such employees; the application shall set forth the manner in which the employees have been so informed. The application shall also advise employees and their employee representatives of their right to apply to the director to conduct a hearing upon the application for a variance. [1973 c 80 § 8.]

49.17.090 Variances from safety and health standards—Notice—Hearing—Order—Modification or revocation. Any employer may apply to the director for an order for a variance from any rule or regulation establishing a safety and health standard promulgated under this chapter. Affected employees shall be given notice of each such application and in the manner prescribed by RCW 49.17.080 shall be informed of their right to request a hearing on any such application. The director shall issue such order granting a variance, after opportunity for an inspection, if he determines or decides after a hearing has been held, if request for hearing has been made, that the applicant for the variance

has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by such applicant employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the safety and health standard or standards from which the variance is sought. The order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. At any time after six months has elapsed from the date of the issuance of the order granting a variance upon application of an employer, employee, or the director on his own motion, after notice has been given in the manner prescribed for the issuance of such order may modify or revoke the order granting the variance from any standard promulgated under the authority of this chapter. [1973 c 80 § 9.]

49.17.100 Inspections—Employer and employee representatives. A representative of the employer and a representative employee authorized by the employees of such employer shall be given an opportunity to accompany the director, or his authorized representative, during the physical inspection of any work place for the purpose of aiding such inspection. Where there is no authorized employee representative, the director or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the work place. The director may adopt procedural rules and regulations to implement the provisions of this section: *Provided*, That neither this section, nor any other provision of this chapter, shall be construed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages or standards or conditions of employment which equal or exceed those established under the authority of this chapter. [1973 c 80 § 10.]

49.17.110 Compliance by employees—Violations—Notice—Review. Each employee shall comply with the provisions of this chapter and all rules, regulations, and orders issued pursuant to the authority of this chapter which are applicable to his own actions and conduct in the course of his employment. Any employee or representative of employees who in good faith believes that a violation of a safety or health standard, promulgated by rule under the authority of this chapter exists that threatens physical harm to employees, or that an imminent danger to such employees exists, may request an inspection of the work place by giving notice to the director or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent no later than at the time of inspection, except that, upon

the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to any provision of this chapter. If upon receipt of such notification the director determines that there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection as soon as practicable, to determine if such violation or danger exists. If the director determines there are no reasonable grounds to believe that a violation or danger exists, he shall notify the employer and the employee or representative of the employees in writing of such determination.

Prior to or during any inspection of a work place, any employee or representative of employees employed in such work place may notify the director or any representative of the director responsible for conducting the inspection, in writing, of any violation of this chapter which he has reason to believe exists in such work place. The director shall, by rule, establish procedures for informal review of any refusal by a representative of the director to issue a citation with respect to any such alleged violation, and shall furnish the employee or representative of employees requesting such review a written statement of the reasons for the director's final disposition of the case. [1973 c 80 § 11.]

49.17.120 Violations—Citations. If upon inspection or investigation the director or his authorized representative believes that an employer has violated a requirement of RCW 49.17.060, or any safety or health standard promulgated by rule adopted by the director, or the conditions of any order granting a variance pursuant to this chapter, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the statute, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health. Each citation, or a copy or copies thereof, issued under the authority of this section and RCW 49.17.130 shall be prominently posted, at or near each place a violation referred to in the citation occurred or as may otherwise be prescribed in regulations issued by the director. The director shall provide by rule for procedures to be followed by an employee representative upon written application to receive copies of citations and notices issued to any employer having employees who are represented by such employee representative. Such rule may prescribe the form of such application, the time for renewal of applications, and the eligibility of the applicant to receive copies of citations and notices. No citation may be issued under this section or RCW 49.17.130 after the expiration of six months following a compliance inspection, investigation, or survey revealing any such violation. [1973 c 80 § 12.]

49.17.130 Violations—Dangerous conditions—Citations and orders of immediate restraint—Restraints—Restraining orders. (1) If upon inspection or investigation, the director, or his authorized representative, believes that an employer has violated a requirement of RCW 49.17.060, or any safety or health standard promulgated by rules of the department, or any conditions of an order granting a variance, which violation is such that a danger exists from which there is a substantial probability that death or serious physical harm could result to any employee, the director or his authorized representative shall issue a citation and may issue an order immediately restraining any such condition, practice, method, process, or means in the work place. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation in order that the resumption of normal operations may be had without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner. In addition, if any machine or equipment, or any part thereof, is in violation of a requirement of RCW 49.17.060 or any safety or health standard promulgated by rules of the department, and the operation of such machine or equipment gives rise to a substantial probability that death or serious physical harm could result to any employee, and an order of immediate restraint of the use of such machine or equipment has been issued under this subsection, the use of such machine or equipment is prohibited, and a notice to that effect shall be attached thereto by the director or his authorized representative.

(2) Whenever the director, or his authorized representative, concludes that a condition of employment described in subsection (1) of this section exists in any work place, he shall promptly inform the affected employees and employers of the danger.

(3) At any time that a citation or a citation and order restraining any condition of employment or practice described in subsection (1) of this section is issued by the director, or his authorized representative, he may in addition request the attorney general to make an application to the superior court of the county wherein such condition of employment or practice exists for a temporary restraining order or such other relief as appears to be appropriate under the circumstances. [1973 c 80 § 13.]

49.17.140 Appeal to board—Citation or notification of assessment of penalty—Final order—Procedure—Redetermination—Hearing. (1) If after an inspection or investigation the director or his authorized representative issues a citation under the authority of RCW 49.17.120 or 49.17.130, the department, within a reasonable time after the termination of such inspection or investigation, shall notify the employer by certified mail of the penalty to be assessed under the authority of

RCW 49.17.180 and shall state that the employer has fifteen working days within which to notify the director that he wishes to appeal the citation or assessment of penalty. If, within fifteen working days from the communication of the notice issued by the director the employer fails to notify the director that he intends to appeal the citation or assessment penalty, and no notice is filed by any employee or representative of employees under subsection (3) of this section within such time, the citation and the assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(2) If the director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted in the citation for its correction, which period shall not begin to run until the entry of a final order in the case of any appeal proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, the director shall notify the employer by certified mail of such failure to correct the violation and of the penalty to be assessed under RCW 49.17.180 by reason of such failure, and shall state that the employer has fifteen working days from the communication of such notification and assessment of penalty to notify the director that he wishes to appeal the director's notification of the assessment of penalty. If, within fifteen working days from the receipt of notification issued by the director the employer fails to notify the director that he intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(3) If any employer notifies the director that he intends to appeal the citation issued under either RCW 49.17.120 or 49.17.130 or notification of the assessment of a penalty issued under subsections (1) or (2) of this section, or if, within fifteen working days from the issuance of a citation under either RCW 49.17.120 or 49.17.130 any employee or representative of employees files a notice with the director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the director may reassume jurisdiction over the entire matter, or any portion thereof upon which notice of intention to appeal has been filed with the director pursuant to this subsection. If the director reassumes jurisdiction of all or any portion of the matter upon which notice of appeal has been filed with the director, any redetermination shall be completed and corrective notices of assessment of penalty, citations, or revised periods of abatement completed within a period of fifteen working days, which redetermination shall then become final subject to direct appeal to the board of industrial insurance appeals within fifteen working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, he shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal any such citations, any such notices of

assessment of penalty and any employee or representative of employees notice of intention to appeal the period of time fixed for abatement of a violation and in addition certify a full copy of the record in such appeal matters to the board. The director shall adopt rules of procedure for the reassumption of jurisdiction under this subsection affording employers, employees, and employee representatives notice of the reassumption of jurisdiction by the director, and an opportunity to object or support the reassumption of jurisdiction, either in writing or orally at an informal conference to be held prior to the expiration of the fifteen day period. A notice of appeal filed under this section shall stay the effectiveness of any citation or notice of the assessment of a penalty pending review by the board of industrial insurance appeals, but such appeal shall not stay the effectiveness of any order of immediate restraint issued by the director under the authority of RCW 49.17.130. The board of industrial insurance appeals shall afford an opportunity for a hearing in the case of each such appellant and the department shall be represented in such hearing by the attorney general and the board shall in addition provide affected employees or authorized representatives of affected employees an opportunity to participate as parties to hearings under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals.

Upon application by an employer showing that a good faith effort to comply with the abatement requirements of a citation has been made and that the abatement has not been completed because of factors beyond his control, the director after affording an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation. [1973 c 80 § 14.]

49.17.150 Appeal to superior court—Review or enforcement of orders. (1) Any person aggrieved by an order of the board of industrial insurance appeals issued under subsection (3) of RCW 49.17.140 may obtain a review of such order in the superior court for the county in which the violation is alleged to have occurred, by filing in such court within thirty days following the communication of the board's order or denial of any petition or petitions for review, a written notice of appeal praying that the order be modified or set aside. A copy of such notice of appeal shall be forthwith transmitted by the clerk of the court to the board of industrial insurance appeals and to all parties to the proceedings before the board, and thereupon the board shall file in the court the complete record of the proceedings. Upon such filing the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings and the record of proceedings a decree affirming, modifying, or setting aside in all or in part, the decision of the board of industrial insurance appeals and enforcing the same to the extent that such order is affirmed or modified.

The commencement of appellate proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the board of industrial insurance appeals. No objection that has not been urged before the board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board or hearing examiner where the board has denied a petition or petitions for review with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact are supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and the judgment and decree shall be final, except as the same shall be subject to review by the supreme court. Appeals filed under this subsection shall be heard expeditiously.

(2) The director may also obtain review or enforcement of any final order of the board by filing a petition for such relief in the superior court for the county in which the alleged violation occurred. The provisions of subsection (1) of this section shall govern such proceeding to the extent applicable. If a notice of appeal, as provided in subsection (1) of this section, is not filed within thirty days after service of the board's order, the board's findings of fact, decision, and order or the examiner's findings of fact, decision, and order when a petition or petitions for review have been denied shall be conclusive in connection with any petition for enforcement which is filed by the director after the expiration of such thirty day period. In any such case, as well as in the case of an unappealed citation or a notification of the assessment of a penalty by the director, which has become a final order under subsection (1) or (2) of RCW 49.17.140 upon application of the director, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the citation and notice of assessment of penalty and shall transmit a copy of such decree to the director and the employer named in the director's petition. In any contempt proceeding brought to enforce a decree of the superior court entered pursuant to this subsection or subsection (1) of this section the superior court may assess the penalties provided in RCW 49.17.180, in addition to invoking any other available remedies. [1973 c 80 § 15.]

49.17.160 Discrimination against employee filing complaint, instituting proceedings or testifying prohibited—Procedure—Remedy. (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty days after such violation occurs, file a complaint with the director alleging such discrimination. Upon receipt of such complaint, the director shall cause such investigation to be made as he deems appropriate. If upon such investigation, the director determines that the provisions of this section have been violated, he shall bring an action in the superior court of the county wherein the violation is alleged to have occurred against the person or persons who is alleged to have violated the provisions of this section. If the director determines that the provisions of this section have not been violated, the employee may institute the action on his own behalf within thirty days of such determination. In any such action the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within ninety days of the receipt of the complaint filed under this section, the director shall notify the complainant of his determination under subsection (2) of this section. [1973 c 80 § 16.]

49.17.170 Injunctions—Temporary restraining orders. (1) In addition to and after having invoked the powers of restraint vested in the director as provided in RCW 49.17.130 the superior courts of the state of Washington shall have jurisdiction upon petition of the director, through the attorney general, to enjoin any condition or practice in any work place from which there is a substantial probability that death or serious physical harm could result to any employee immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation to resume normal operation without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(2) Upon the filing of any such petition the superior courts of the state of Washington shall have jurisdiction to grant such injunctive relief or temporary restraining

order pending the outcome of enforcement proceedings pursuant to this chapter, except that no temporary restraining order issued without notice shall be effective for a period longer than five working days.

(3) Whenever and as soon as any authorized representative of the director concludes that a condition or practice described in subsection (1) exists in any work place, he shall inform the affected employees and employers of the danger and may recommend to the director that relief be sought under this section.

(4) If the director arbitrarily or capriciously fails to invoke his restraining authority under RCW 49.17.130 or fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, may bring an action against the director in the superior court for the county in which the danger is alleged to exist for a writ of mandamus to compel the director to seek such an order and for such further relief as may be appropriate or seek the director to exercise his restraining authority under RCW 49.17.130. [1973 c 80 § 17.]

49.17.180 Violations—Civil penalties. (1) Any employer who wilfully or repeatedly violates the requirements of RCW 49.17.060, or any safety and health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed ten thousand dollars for each violation.

(2) Any employer who has received a citation for a serious violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 as determined in accordance with subsection (6) of this section, shall be assessed a civil penalty not to exceed one thousand dollars for each such violation.

(3) Any employer who has received a citation for a violation of the requirements of RCW 49.17.060, of any safety and health standard promulgated under this chapter, or any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090, where such violation is specifically determined not to be of a serious nature as provided in subsection (6) of this section, may be assessed a civil penalty not to exceed one thousand dollars for each such violation, unless such violation is determined to be de minimis.

(4) Any employer who fails to correct a violation for which a citation has been issued under RCW 49.17.120 or 49.17.130 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board of industrial insurance appeals in the case of any review proceedings under this chapter initiated by the employer in good faith and not

solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than one thousand dollars for each day during which such failure or violation continues.

(5) Any employer who violates any of the posting requirements of this chapter, or any of the posting requirements of rules promulgated by the department pursuant to this chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall be assessed a penalty of not to exceed one thousand dollars for each such violation. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of RCW 49.17.050(7), may be assessed a penalty of not to exceed five hundred dollars for each such violation.

(6) For the purposes of this section, a serious violation shall be deemed to exist in a work place if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such work place, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(7) The director, or his authorized representatives, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation, the size of the employer's business, the good faith of the employer, and the history of previous violations.

(8) Civil penalties imposed under this chapter shall be paid to the director for deposit in the supplemental pension fund established by RCW 51.44.033. Civil penalties may be recovered in a civil action in the name of the department brought in the superior court of the county where the violation is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150. [1973 c 80 § 18.]

49.17.190 Violations—Criminal penalties. (1) Any person who gives advance notice of any inspection to be conducted under the authority of this chapter, without the consent of the director or his authorized representative, shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both.

(2) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than six months or by both.

(3) Any employer who wilfully and knowingly violates the requirements of RCW 49.17.060, any safety and health standard promulgated under this chapter, any existing rule or regulation governing the safety and health conditions of employment and adopted by the director, or any order issued granting a variance under RCW 49.17.080 or 49.17.090 and that violation caused death to any employee shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than six months or by both; except, that if the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than twenty thousand dollars or by imprisonment for not more than one year, or by both.

(4) Any employer who has been issued an order immediately restraining a condition, practice, method, process, or means in the work place, pursuant to RCW 49.17.130 or 49.17.170, and who nevertheless continues such condition, practice, method, process, or means, or who continues to use a machine or equipment or part thereof to which a notice prohibiting such use has been attached, shall be guilty of a gross misdemeanor, and upon conviction shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both.

(5) Any employer who shall knowingly remove, displace, damage, or destroy, or cause to be removed, displaced, damaged, or destroyed any safety device or safeguard required to be present and maintained by any safety or health standard, rule, or order promulgated pursuant to this chapter, or pursuant to the authority vested in the director under RCW 43.22.050 shall, upon conviction, be guilty of a misdemeanor and be punished by a fine of not more than two hundred fifty dollars or by imprisonment for not more than ninety days, or by both.

(6) Whenever the director has reasonable cause to believe that any provision of this section defining a crime has been violated by an employer, the director shall cause a record of such alleged violation to be prepared, a copy of which shall be referred to the prosecuting attorney of the county wherein such alleged violation occurred, and the prosecuting attorney of such county shall in writing advise the director of the disposition he shall make of the alleged violation. [1973 c 80 § 19.]

49.17.200 Confidentiality—Trade secrets. All information reported to or otherwise obtained by the director, or his authorized representative, in connection with any inspection or proceeding under the authority of this chapter, which contains or which might reveal a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. In any such proceeding the director, the board of industrial insurance appeals, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. [1973 c 80 § 20.]

49.17.210 Research, experiments, and demonstrations for safety purposes—Variances. The director is authorized to conduct, either directly or by grant or contract, research, experiments, and demonstrations as may be of aid and assistance in the furtherance of the objects and purposes of this chapter. The director, in his discretion, is authorized to grant a variance from any rule or regulation or portion thereof, whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by the director, which experiment is designed to demonstrate or validate new and improved techniques to safeguard the health or safety of employees. Any such variance shall require that all due regard be given to the health and safety of all employees participating in any experiment. [1973 c 80 § 21.]

49.17.220 Records—Reports—Notice to employee exposed to harmful materials. (1) Each employer shall make, keep, and preserve, and make available to the director such records regarding his activities relating to this chapter as the director may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The director shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable safety and health standards.

(2) The director shall prescribe regulations requiring employers to maintain accurate records, and to make periodic reports of work-related deaths, and of injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The director shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any applicable safety and health standard promulgated under this chapter and shall inform any employee who is being thus exposed of the corrective action being taken. [1973 c 80 § 22.]

49.17.230 Compliance with federal act—Agreements and acceptance of grants authorized. The director is authorized to adopt by rule any provision reasonably necessary to enable this state to qualify a state plan under section 18 of the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590) to enable this state to assume the responsibility for the development and enforcement of occupational safety and health standards in all work places within this state subject to the legislative jurisdiction of the state of Washington. The director is authorized to enter into agreement with the United States and to accept on behalf of the state of Washington grants of funds to implement the development and enforcement of this chapter and the Occupational Safety and Health Act of 1970. [1973 c 80 § 23.]

49.17.240 Safety and health standards. (1) The director in the promulgation of rules under the authority of this chapter shall establish safety and health standards for conditions of employment of general and/or specific applicability for all industries, businesses, occupations, crafts, trades, and employments subject to the provisions of this chapter, or those that are a national or accepted federal standard. In adopting safety and health standards for conditions of employment, the director shall solicit and give due regard to all recommendations by any employer, employee, or labor representative of employees.

(2) Any safety and health standard adopted by rule of the director shall, where appropriate, prescribe the use of labels or other forms of warning to insure that employees are apprised of all hazards to which they may be exposed, relevant symptoms, and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such rules shall so prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be reasonably necessary for the protection of employees. In addition, where appropriate, any such rule shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event that such medical examinations are in the nature of research, as determined by the director, such examinations may be furnished at the expense of the department. The results of such examinations or tests shall be furnished only to the director, other appropriate agencies of government, and at the request of the employee to his physician.

(3) Whenever the director adopts by rule any safety and health standard he may at the same time provide by rule the effective date of such standard which shall not be less than thirty days, excepting emergency rules, but may be made effective at such time in excess of thirty days from the date of adoption as specified in any rule adopting a safety and health standard. Any rule

not made effective thirty days after adoption, having a delayed effectiveness in excess of thirty days, may only be made upon a finding made by the director that such delayed effectiveness of the rule is reasonably necessary to afford the affected employers a reasonable opportunity to make changes in methods, means, or practices to meet the requirements of the adopted rule. Temporary orders granting a variance may be utilized by the director in lieu of the delayed effectiveness in the adoption of any rule. [1973 c 80 § 24.]

49.17.250 Voluntary compliance program—Consultation and advisory services. (1) In carrying out his responsibilities for the development of a voluntary compliance program under the authority of RCW 49.17.050(8) and the rendering of advisory and consultative services to employers, the director may grant an employer's application for advice and consultation, and for the purpose of affording such consultation and advice visit the employer's work place. Such consultation and advice shall be limited to the matters specified in the request affecting the interpretation and applicability of safety and health standards to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices in the employer's work place. The director in granting any requests for consultative or advisory service may provide for an alternative means of affording consultation and advice other than on-site consultation.

(2) The director, or his authorized representative, may make recommendations regarding the elimination of any hazards disclosed within the scope of the on-site consultation. No visit to an employer's work place shall be regarded as an inspection or investigation under the authority of this chapter, and no notices or citations shall be issued, nor, shall any civil penalties be assessed upon such visit, nor shall any authorized representative of the director designated to render advice and consult with employers under the voluntary compliance program have any enforcement authority: *Provided*, That in the event an on-site visit discloses a serious violation of a health and safety standard as defined in RCW 49.17.180(6), and the hazard of such violation is either not abated by the cooperative action of the employer, or, is not subject to being satisfactorily abated by the cooperative action of the employer, the director shall either invoke the administrative restraining authority provided in RCW 49.17.130 or seek the issuance of injunctive process under the authority of RCW 49.17.170 or invoke both such remedies.

(3) Nothing in this section shall be construed as providing immunity to any employer who has made application for consultative services during the pendency of the granting of such application from inspections or investigations conducted under RCW 49.17.070 or any inspection conducted as a result of a complaint, nor immunity from inspections under RCW 49.17.070 or inspections resulting from a complaint subsequent to the conclusion of the consultative period. This section shall not be construed as requiring an inspection under RCW 49.17.070 of any work place which has been visited for consultative purposes. However, in the event of

a subsequent inspection, the director, or his authorized representative, may in his discretion take into consideration any information obtained during the consultation visit of that work place in determining the nature of an alleged violation and the amount of penalties to be assessed, if any. Such rules and regulations to be promulgated pursuant to this section shall provide that in all instances of serious violations as defined in RCW 49.17.180(6) which are disclosed in any consultative period, shall be corrected within a specified period of time at the expiration of which an inspection will be conducted under the authority of RCW 49.17.070. All employers requesting consultative services shall be advised of the provisions of this section and the rules adopted by the director relating to the voluntary compliance program. The director may provide by rule for the frequency, manner, and method of the rendering of consultative services to employers, and for the scheduling and priorities in granting applications consistent with the availability of personnel, and in such a manner as not to jeopardize the enforcement requirements of this chapter. [1973 c 80 § 25.]

49.17.260 Statistics—Investigations—Reports.

In furtherance of the objects and purposes of this chapter, the director shall develop and maintain an effective program of collection, compilation, and analysis of industrial safety and health statistics. The director, or his authorized representative, shall investigate and analyze industrial catastrophes, serious injuries, and fatalities occurring in any work place subject to this chapter, in an effort to ascertain whether such injury or fatality occurred as the result of a violation of this chapter, or any safety and health standard, rule, or order promulgated pursuant to this chapter, or if not, whether a safety and health standard or rule should be promulgated for application to such circumstances. The director shall adopt rules relating to the conducting and reporting of such investigations. Such investigative report shall be deemed confidential and only available upon order of the superior court after notice to the director and an opportunity for hearing: *Provided*, That such investigative reports shall be made available without the necessity of obtaining a court order, to employees of governmental agencies in the performance of their official duties, to the injured workman or his legal representative or his labor organization representative, or to the legal representative or labor organization representative of a deceased workman who was the subject of an investigation, or to the employer of the injured or deceased workman or any other employer or person whose actions or business operation is the subject of the report of investigation, or any attorney representing a party in any pending legal action in which an investigative report constitutes relevant and material evidence in such legal action. [1973 c 80 § 26.]

49.17.270 Administration of chapter. The department shall be the sole and paramount administrative agency responsible for the administration of the provisions of this chapter, and any other agency of the state or any municipal corporation or political subdivision of the

state having administrative authority over the inspection, survey, investigation, or any regulatory or enforcement authority of safety and health standards related to the health and safety of employees in any work place subject to this chapter, shall be required, notwithstanding any statute to the contrary, to exercise such authority as provided in this chapter and subject to interagency agreement or agreements with the department made under the authority of the interlocal cooperation act (chapter 39.34 RCW) relative to the procedures to be followed in the enforcement of this chapter: *Provided*, That in relation to employers using or possessing sources of ionizing radiation the department of labor and industries and the department of social and health services shall agree upon mutual policies, rules, and regulations compatible with policies, rules, and regulations adopted pursuant to chapter 70.98 RCW insofar as such policies, rules, and regulations are not inconsistent with the provisions of this chapter. [1973 c 80 § 27.]

49.17.900 Short title. This act shall be known and cited as the Washington Industrial Safety and Health Act of 1973. [1973 c 80 § 29.]

49.17.910 Severability—1973 c 80. 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. [1973 c 80 § 30.]

Chapter 49.24 HEALTH AND SAFETY—UNDERGROUND WORKERS

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Coal mining code: Title 78 RCW.

Protection of employees: State Constitution Art. 2 § 35.

Supervisor of safety: RCW 43.22.040.

49.24.010 Pressure, defined. The term "pressure" means gauge air pressure in pounds per square inch. [1937 c 131 § 1; RRS § 7666-1.]

49.24.020 Compressed air safety requirements. Every employer of persons for work in compressed air shall:

(1) Connect at least two air pipes with the working chamber and keep such pipes in perfect working condition;

(2) Attach to the working chamber in accessible positions all instruments necessary to show its pressure and keep such instruments in charge of competent persons, with a period of duty for each such person not exceeding six hours in any twenty-four;

(3) Place in each shaft a safe ladder extending its entire length;

(4) Light properly and keep clear such passageway;

(5) Provide independent lighting systems for the working chamber and shaft leading to it, when electricity is used for lighting;

(6) Guard lights other than electric lights;

(7) Protect workmen by a shield erected in the working chamber when such chamber is less than ten feet long and is suspended with more than nine feet space between its deck and the bottom of the excavation;

(8) Provide for and keep accessible to employees working in compressed air a dressing room heated, lighted and ventilated properly and supplied with benches, lockers, sanitary waterclosets, bathing facilities and hot and cold water;

(9) Establish and maintain a medical lock properly heated, lighted, ventilated and supplied with medicines and surgical implements, when the maximum air pressure exceeds seventeen pounds. [1937 c 131 § 2; RRS § 7666-2.]

49.24.030 Medical and nursing attendants. Every employer of persons for work in compressed air shall:

(1) Keep at the place of work at all necessary times a duly qualified medical officer to care for cases of illness and to administer strictly and enforce RCW 49.24.020 and 49.24.040;

(2) Keep at a medical lock required by RCW 49.24.020(9) a certified nurse selected by the medical officer required by subdivision (1) of this section and qualified to give temporary relief in cases of illness. [1937 c 131 § 3; RRS § 7666-3.]

49.24.040 Examination as to physical fitness. If an employee is a new employee, an absentee for ten or more successive days, an employee who has worked in compressed air continuously for three months or a beginner in compressed air who has worked but a single shaft [shift] as required by RCW 49.24.050, the officer required by RCW 49.24.030(1) shall examine him and

declare him physically fit to work in compressed air before permitting him to enter or reenter the working chamber. Excessive users of intoxicants shall not be permitted to work in compressed air. [1937 c 131 § 4; RRS § 7666-4.]

Reviser's note: RCW 49.24.050 was repealed by 1963 c 105 § 1.

49.24.060 Penalty. Violation of or noncompliance with any provision of this article by any employer, manager, superintendent, foreman or other person having direction or control of such work shall be a gross misdemeanor punishable by a fine of not less than two hundred and fifty dollars or by imprisonment for not more than one year or by both such fine and imprisonment. [1937 c 131 § 7; RRS § 7666-7.]

Reviser's note: "this article" appears in the session law (1937 c 131), an eight section act which was not subdivided by "article" organization. Such act is codified herein as RCW 49.24.010 through 49.24.070.

49.24.070 Enforcement. The director of labor and industries through and by means of the division of industrial safety and health shall have the power and it shall be his duty to enforce the provisions of RCW 49.24.010 through 49.24.070. Any authorized inspector or agent of the division of industrial safety and health may issue and serve upon the employer or person in charge of such work, an order requiring compliance with a special provision or specific provisions of RCW 49.24.010 through 49.24.070 and directing the discontinuance of any employment of persons in compressed air in connection with such work until such specific provision or provisions have been complied with by such employer to the satisfaction of the division of industrial safety and health. [1973 1st ex.s. c 52 § 7; 1937 c 131 § 8; RRS § 7666-8.]

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

49.24.080 Requirements for underground labor. Every person, firm or corporation constructing, building or operating a tunnel, quarry, caisson or subway, excepting in connection with mines, with or without compressed air, shall in the employment of any labor comply with the following safety provisions:

(1) A safety miner shall be selected by the crew on each shift who shall check the conditions necessary to make the working place safe; such as loose rock, faulty timbers, poor rails, lights, ladders, scaffolds, fan pipes and firing lines.

(2) Ventilating fans shall be installed from twenty-five to one hundred feet outside the portal.

(3) No employee shall be allowed to "bar down" without the assistance of another employee.

(4) No employee shall be permitted to return to the heading until at least thirty minutes after blasting.

(5) Whenever persons are employed in wet places, the employer shall furnish such persons with rubbers, boots, coats and hats. All boots if worn previously by an employee shall be sterilized before being furnished to another: *Provided*, That RCW 49.24.080 through 49.24.380 shall not apply to the operation of a railroad except that new construction of tunnels, caissons or

subways in connection therewith shall be subject to the provisions of RCW 49.24.080 through 49.24.380: *Provided, further*, That in the event of repair work being done in a railroad tunnel, no person shall be compelled to perform labor until the air has been cleared of smoke, gas and fumes. [1973 1st ex.s. c 154 § 89; 1965 c 144 § 1; 1941 c 194 § 1; Rem. Supp. 1941 § 7666-9.]

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

49.24.100 Lighting appliances. (1) All lighting in compressed air chambers shall be by electricity only. Wherever practicable there shall be two independent lighting systems with independent sources of supply.

(2) The exterior of all lamp sockets shall be entirely nonmetallic.

(3) All portable incandescent lamps used shall be guarded by a wire cage large enough to enclose both lamp and socket.

(4) All incandescent lamps shall be so placed that they cannot come in contact with any combustible material.

(5) Only heavy insulated or armored wire shall be used for light or power. [1941 c 194 § 3; Rem. Supp. 1941 § 7666-11.]

49.24.110 Exhaust valves. Exhaust valves shall be provided, having risers extending to the upper part of chamber, if necessary, and shall be operated at such times as may be required and especially after a blast, and persons shall not be required to resume work after a blast until the gas and smoke have cleared, for at least thirty minutes. [1973 1st ex.s. c 154 § 90; 1941 c 194 § 4; Rem. Supp. 1941 § 7666-12.]

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

49.24.120 Fire prevention. All reasonable precaution shall be taken against fire, and provisions shall be made so that water lines shall be available for use at all times. Fire hose connections with hose connected shall be installed in all power plants and work houses. There shall be fire hose connections within reasonable distance of all caissons. Fire hose shall be connected at either side of a tunnel bulkhead, with at least fifty feet of hose with nozzle connection. Water lines shall extend into each tunnel with hose connections every two hundred feet and shall be kept ready for use at all times. [1941 c 194 § 5; Rem. Supp. 1941 § 7666-13.]

49.24.130 Air chambers—Hanging walks. (1) Whenever the air pressure in a tunnel heading exceeds twenty-one pounds per square inch above atmospheric pressure, two air chambers shall always be in use, except for such time as may be necessary when headings are being started from shafts; and whenever practicable the pressure in the outer chamber shall not exceed one-half the pressure in the heading;

(2) In all tunnels sixteen feet in diameter or over, hanging walks shall be provided from working face to nearest lock. An overhead clearance of six feet shall be

maintained and suitable ramps provided under all safety screens. [1941 c 194 § 6; Rem. Supp. 1941 § 7666-14.]

49.24.140 Locks. (1) Each bulkhead in tunnels of twelve feet or more in diameter or equivalent area, shall have at least two locks in perfect working condition, one of which shall be used as a man lock. An additional lock for use in case of emergency shall be held in reserve.

(2) The man lock shall be large enough so that those using it are not compelled to be in a cramped position, and shall not be less than five feet in height. Emergency locks shall be large enough to hold an entire heading shift.

(3) All locks used for decompression shall be lighted by electricity and shall contain a pressure gauge, a time piece, a glass "bull's eye" in each door or in each end, and shall also have facilities for heating.

(4) Valves shall be so arranged that the locks can be operated both from within and from without. [1941 c 194 § 7; Rem. Supp. 1941 § 7666-15.]

49.24.150 Explosives and detonators. When locking explosives and detonators into the air chamber, they shall be kept at opposite ends of the lock. While explosives and detonators are being taken through, no men other than the lock tender and the carriers shall be permitted in the lock. [1941 c 194 § 8; Rem. Supp. 1941 § 7666-16.]

49.24.160 Air plant—Feed water. (1) A good and sufficient air plant for the compression of air shall be provided to meet not only ordinary conditions, but emergencies, and to provide margin for repairs at all times. Provision must be made for storing in tanks at each boiler house enough feed water for twelve hours' supply unless connection can be made with two independent and separately sufficient sources of supply.

(2) The plant shall be capable of furnishing to each working chamber a sufficient air supply for all pressure to enable work to be done. [1941 c 194 § 9; Rem. Supp. 1941 § 7666-17.]

49.24.170 Electric power requirements. When electric power is used for running compressors supplying air for compressed air tunnel work and such power is purchased from a local central station or power company—

(1) There shall be two or more sources of power from the power company's stations to the compressor plant. Such power feeders shall each have a capacity large enough to carry the entire compressor plant load and normal overload. The feeders shall preferably run from separate generating plants or substations and be carried to the compressor plant over separate routes and not through the same duct lines and manholes so that the breakdown of one feeder shall not cause an interruption on the other feeder.

(2) There shall be duplicate feeder bus-bars, and feeder connections to the bus-bars shall be such that

either feeder can feed to each separate bus-bar set, individually, or simultaneously to both sets.

(3) There shall be at least two compressors so connected to the bus-bars that they can be operated from either set of busses. The compressors shall be fed from different bus-bar sets, in such a way that a breakdown of a feeder or bus-bar would interrupt the operation of only part of the compressor plant.

(4) Duplicate air feed pipes shall be provided from the compressor plant to a point beyond the lock. [1941 c 194 § 10; Rem. Supp. 1941 § 7666-18.]

49.24.180 Inspection. While work is in progress, the employer shall employ a competent person who shall make a regular inspection at least once every working day of all engines, boilers, steam pipes, drills, air pipes, air gauges, air locks, dynamos, electric wiring, signaling apparatus, brakes, cages, buckets, hoists, cables, ropes, timbers, supports, and all other apparatus and appliances; and he shall immediately upon discovery of any defect, report same in writing to the employer, or his agent in charge. [1941 c 194 § 11; Rem. Supp. 1941 § 7666-19.]

49.24.190 Cars, cages, buckets—Employees riding or walking. No employee shall ride on any loaded car, cage or bucket, nor walk up or down any incline or shaft while any car, cage or bucket is above him. [1941 c 194 § 12; Rem. Supp. 1941 § 7666-20.]

49.24.200 Speed of vehicles. No vehicle shall be operated underground at a speed greater than five miles an hour, while construction work is going on. [1941 c 194 § 13; Rem. Supp. 1941 § 7666-21.]

49.24.210 Oil supply restricted. Oil for illumination or power shall not be taken into the underground workings of any tunnel or kept therein in greater quantities than one day's supply. [1941 c 194 § 14; Rem. Supp. 1941 § 7666-22.]

49.24.220 Explosives, use of—Blasting. (1) No greater quantity of explosives than that which is required for immediate use shall be taken into the working chamber.

(2) Explosives shall be conveyed in a suitable covered wooden box.

(3) Detonators shall be conveyed in a separate covered wooden box.

(4) Explosives and detonators shall be taken separately into the caissons.

(5) After blasting is completed, all explosives and detonators shall be returned at once to the magazine.

(6) No naked light shall be used in the vicinity of open chests or magazines containing explosives, nor near where a charge is being primed.

(7) No tools or other articles shall be carried with the explosives or with the detonators.

(8) All power lines and electric light wires shall be disconnected at a point outside the blasting switch before the loading of holes. No current by grounding of power or bonded rails shall be allowed beyond blasting

switch after explosives are taken in preparatory to blasting, and under no circumstances shall grounded current be used for exploding blasts.

(9) Before drilling is commenced on any shift, all remaining holes shall be examined with a wooden stick for unexploded charges or cartridges, and if any are found, same shall be refired before work proceeds.

(10) No person shall be allowed to deepen holes that have previously contained explosives.

(11) All wires in broken rock shall be carefully traced and search made for unexploded cartridges.

(12) Whenever blasting is being done in a tunnel, at points liable to break through to where other men are at work, the foreman or person in charge shall, before any holes are loaded, give warning of danger to all persons that may be working where the blasts may break through, and he shall not allow any holes to be charged until warning is acknowledged and men are removed.

(13) Blasters when testing circuit through charged holes shall use sufficient leading wires to be at a safe distance and shall use only approved types of galvanometers. No tests of circuits in charged holes shall be made until men are removed to safe distance.

(14) No blasts shall be fired with fuse, except electrically ignited fuse, in vertical or steep shafts.

(15) In shaft sinking where the electric current is used for firing, a separate switch not controlling any electric lights must be used for blasting and proper safeguard similar to those in tunnels must be followed in order to insure against premature firing. [1941 c 194 § 15; Rem. Supp. 1941 § 7666-23.]

Explosives: Chapter 70.74 RCW.

49.24.230 Firing switch—Warning by blaster. When firing by electricity from power or lighting wires, a proper switch shall be furnished with lever down when "off".

The switch shall be fixed in a locked box to which no person shall have access except the blaster. There shall be provided flexible leads or connecting wires not less than five feet in length with one end attached to the incoming lines and the other end provided with plugs that can be connected to an effective ground. After blasting, the switch lever shall be pulled out, the wires disconnected and the box locked before any person shall be allowed to return, and shall remain so locked until again ready to blast.

In the working chamber all electric light wires shall be provided with a disconnecting switch, which must be thrown to disconnect all current from the wires in the working chamber before electric light wires are removed or the charge exploded.

Before blasting the blaster shall cause a sufficient warning to be sounded and shall compel all persons to retreat to a safe shelter, before he sets off the blast, and shall permit no one to return until conditions are safe. [1941 c 194 § 16; Rem. Supp. 1941 § 7666-24.]

49.24.240 Inspection after blast. (1) After a blast is fired, loosened pieces of rock shall be scaled from the sides of the excavation and after the blasting is completed, the entire working chamber shall be thoroughly scaled.

(2) The person in charge shall inspect the working chamber and have all loose rock or ground removed and the chamber made safe before proceeding with the work.

(3) Drilling must not be started until all remaining butts of old holes are examined for unexploded charges. [1941 c 194 § 17; Rem. Supp. 1941 § 7666-25.]

49.24.250 Code of signals. Any code of signals used shall be printed and copies thereof, in such languages as may be necessary to be understood by all persons affected thereby, shall be kept posted in a conspicuous place near entrances to work places and in such other places as may be necessary to bring them to the attention of all persons affected thereby.

Effective and reliable signaling devices shall be maintained at all times to give instant communication between the bottom and top of the shaft. [1941 c 194 § 18; Rem. Supp. 1941 § 7666-26.]

49.24.260 Requirements as to caissons. All shafting used in pneumatic caissons shall be provided with ladders, which are to be kept clear and in good condition at all times. The distance between the centers of the rungs of a ladder shall not exceed fourteen inches and shall not vary more than one inch in any one piece of shafting. The length of the ladder rungs shall not be less than nine inches. The rungs of the ladder shall in no case be less than three inches from the wall or other obstruction in the shafting or opening in which the ladder shall be used. Under no circumstances shall a ladder inclining backward from the vertical be installed. A suitable ladder shall be provided from the top of all locks to the surface.

All man shafts shall be lighted at a distance of every ten feet with a guarded incandescent lamp.

All outside caisson air locks shall be provided with a platform not less than forty-two inches wide, and provided with a guard rail forty-two inches high.

All caissons in which fifteen or more men are employed shall have two locks, one of which shall be used as a man lock. Man locks and man shafts shall be in charge of a man whose duty it shall be to operate said lock and shaft. All caissons more than ten feet in diameter shall be provided with a separate man shaft, which shall be kept clear and in operating order at all times.

Locks shall be so located that the distance between the bottom door and water level shall be not less than three feet. [1941 c 194 § 19; Rem. Supp. 1941 § 7666-27.]

49.24.270 Shields to be provided. Wherever, in the prosecution of caisson work in which compressed air is employed, the working chamber is less than twelve feet in length, and when such caissons are at any time suspended or hung while work is in progress, so that the bottom of the excavation is more than nine feet below

the deck of the working chamber, a shield shall be erected therein for the protection of the workmen. [1941 c 194 § 20; Rem. Supp. 1941 § 7666-28.]

49.24.280 Caissons to be braced. All caissons shall be properly and adequately braced before loading with concrete or other weight. [1941 c 194 § 21; Rem. Supp. 1941 § 7666-29.]

49.24.290 Cages—Hoisting apparatus. In all shafts where men are hoisted or lowered, an iron-bonneted cage shall be used for the conveyance of men, but this provision shall not apply to shafts in the process of sinking or during the dismantling of the shaft after work in the tunnel is substantially completed.

Cages shall be provided with bonnets consisting of two steel plates not less than three-sixteenths of an inch in thickness, sloping toward each side and so arranged that they may be readily pushed upward to afford egress to persons therein, and such bonnet shall cover the top of the cage in such manner as to protect persons in the cage from falling objects.

Cages shall be entirely enclosed on two sides with solid partition or wire mesh not less than No. 8 U.S. Standard gauge, no opening in which shall exceed two inches.

Cages shall be provided with hanging chains or other similar devices for hand holds.

Every cage shall be provided with an approved safety catch of sufficient strength to hold the cage with its maximum load at any point in the shaft.

All parts of the hoisting apparatus, cables, brakes, guides and fastenings shall be of the most substantial design and shall be arranged for convenient inspection. The efficiency of all safety devices shall be established by satisfactory tests before the cages are put into service and at least once every three months thereafter and a record thereof kept.

The test of the safety catch shall consist of releasing the cage suddenly in such manner that the safety catches shall have opportunity to grip the guides. [1941 c 194 § 22; Rem. Supp. 1941 § 7666-30.]

49.24.300 Buckets in vertical shafts. In all vertical shafts in which hoisting is done by means of a bucket, suitable guides shall be provided when the depth exceeds ten times the diameter or width of the shaft, but in no case shall the maximum depth without guides exceed one hundred and fifty feet. In connection with the bucket, there shall be a crosshead traveling between these guides. The height of the crosshead shall be at least two-thirds of its width, but the height in no case shall be less than thirty inches. [1941 c 194 § 23; Rem. Supp. 1941 § 7666-31.]

49.24.310 Telephone system for tunnels. Where tunnels are driven from shafts more than two hundred and fifty feet deep, a telephone system shall be established and maintained, communicating with the surface at each such shaft, and with a station or stations readily and quickly accessible to the men at the working level. [1941 c 194 § 24; Rem. Supp. 1941 § 7666-32.]

49.24.320 Location of lights. (1) While work is in progress, tunnels, stairways, ladderways and all places on the surface where work is being conducted, shall be properly lighted. In shafts more than one hundred feet deep, the shaft below that point shall be lighted.

(2) All places where hoisting, pumping or other machinery is erected and in the proximity of which persons are working or moving about, shall be so lighted when the machine is in operation that the moving parts of such machine can be clearly distinguished. [1941 c 194 § 25; Rem. Supp. 1941 § 7666-33.]

49.24.330 Generators, transformers, etc., to be grounded. The frames and bed plates of generators, transformers, compensators, rheostats and motors installed underground shall be effectively grounded. All metallic coverings, armoring of cables, other than trailing cables, and the neutral wire of three-wire systems shall also be so grounded. [1941 c 194 § 26; Rem. Supp. 1941 § 7666-34.]

49.24.340 Electrical voltage. In electrical systems installed, no higher voltage than low voltage shall be used underground, except for transmission or other application to transformers, motors, generators or other apparatus in which the whole of the medium or high voltage apparatus is stationary. [1941 c 194 § 27; Rem. Supp. 1941 § 7666-35.]

49.24.350 Lamps to be held in reserve. Lamps or other proper lights shall be kept ready for use in all underground stations where a failure of electric light is likely to cause danger. [1941 c 194 § 28; Rem. Supp. 1941 § 7666-36.]

49.24.360 Insulators required. (1) All underground cables and wires, unless provided with grounded metallic covering, shall be supported by efficient insulators. The conductors connecting lamps to the power supply shall in all cases be insulated.

(2) Cables and wires unprovided with metallic coverings shall not be fixed to walls or timbers by means of uninsulated fastenings. [1941 c 194 § 29; Rem. Supp. 1941 § 7666-37.]

49.24.370 Director to make rules and regulations. The director of labor and industries shall establish such rules and regulations as he deems primarily necessary for the safety of the employees employed in tunnels, quarries, caissons and subways and shall be guided by the most modern published studies and researches made by persons or institutions into the correction of the evils chargeable to improper safeguards and inspection of the tools, machinery, equipment and places of work obtaining in the industries covered by RCW 49.24.080 through 49.24.380. [1941 c 194 § 32; Rem. Supp. 1941 § 7666-39.]

49.24.380 Penalty. Every person violating any of the provisions of RCW 49.24.080 through 49.24.380 shall be guilty of a misdemeanor. [1941 c 194 § 31; Rem. Supp. 1941 § 7666-38.]

Chapter 49.26

HEALTH AND SAFETY—ASBESTOS USE

Sections

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| 49.26.010 | Legislative declaration. |
| 49.26.020 | Asbestos use standards. |
| 49.26.030 | Containers for asbestos products. |
| 49.26.040 | Regulations—Enforcement. |
| 49.26.900 | Severability—1973 c 30. |

49.26.010 Legislative declaration. Air-borne asbestos dust and particles, such as those from sprayed asbestos slurry, asbestos-coated ventilating ducts, and certain other applications of asbestos are known to produce irreversible lung damage and bronchogenic carcinoma. One American of every four dying in urban areas of the United States has asbestos particles or dust in his lungs. The nature of this problem is such as to constitute a hazard to the public health and safety, and should be brought under appropriate regulation. [1973 c 30 § 1.]

49.26.020 Asbestos use standards. Standards regulating the use of asbestos in construction or manufacturing shall be established by the director of the department of labor and industries, with the advice of the state health officer and the department of ecology. Standards to be adopted shall describe the types of asbestos that may be used in construction and manufacturing, the methods and procedures for their use, and such other requirements as may be needed to protect the public health and safety with respect to air-borne asbestos particles and asbestos dust. [1973 c 30 § 2.]

49.26.030 Containers for asbestos products. Products containing asbestos shall be stored in containers of types approved by the director of the department of labor and industries, with the advice of the state health officer and the department of ecology. Containers of asbestos shall be plainly marked "Asbestos—do not inhale" or other words to the same effect. [1973 c 30 § 3.]

49.26.040 Regulations—Enforcement. The asbestos use standards required under RCW 49.26.020 and the list of approved container types required under RCW 49.26.030 shall be adopted as regulations of the department of labor and industries. The department shall have the power to implement and enforce such regulations. [1973 c 30 § 4.]

49.26.900 Severability—1973 c 30. If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 30 § 5.]

Chapter 49.28

HOURS OF LABOR

Sections

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| 49.28.010 | Eight hour day, 1899 act. |
| 49.28.020 | Eight hour day, 1899 act—Public works contracts—Emergency overtime. |
| 49.28.030 | Eight hour day, 1899 act—Penalty. |
| 49.28.040 | Eight hour day, 1903 act—Policy enunciated. |

- 49.28.050 Eight hour day, 1903 act—Contracts, cancellation of, for violations.
- 49.28.060 Eight hour day, 1903 act—Stipulation in contracts—Duty of officers.
- 49.28.080 Hours of domestic employees.
- 49.28.082 Hours of domestic employees—Exception.
- 49.28.084 Hours of domestic employees—Penalty.
- 49.28.100 Hours of operators of power equipment in waterfront operations.
- 49.28.110 Hours of operators of power equipment in waterfront operations—Penalty.

Bakeries, hours of persons under sixteen: RCW 69.11.090, 69.11.100.

Child labor: RCW 26.28.060, 26.28.070.

Employer of minor must permit school attendance: RCW 28A.28.110.

Employment permits for minors: Chapter 28A.28 RCW.

Hours of labor for public institutions personnel: RCW 43.19.255, 43.19.256.

Prevailing wages must be paid on public works: RCW 39.12.020.

49.28.010 Eight hour day, 1899 act. Hereafter eight hours in any calendar day shall constitute a day's work on any work done for the state or any county or municipality within the state, subject to conditions hereinafter provided. [1899 c 101 § 1; RRS § 7642.]

49.28.020 Eight hour day, 1899 act—Public works contracts—Emergency overtime. All work done by contract or subcontract on any building or improvements or works on roads, bridges, streets, alleys or buildings for the state or any county or municipality within the state, shall be done under the provisions of RCW 49.28.010 through 49.28.030: *Provided*, That in cases of extraordinary emergency such as danger to life or property, the hours for work may be extended, but in such case the rate of pay for time employed in excess of eight hours of each calendar day, shall be one and one-half times the rate of pay allowed for the same amount of time during eight hours' service. And for this purpose RCW 49.28.010 through 49.28.030 is made a part of all contracts, subcontracts or agreements for work done for the state or any county or municipality within the state. [1899 c 101 § 2; RRS § 7643.]

49.28.030 Eight hour day, 1899 act—Penalty. Any contractor, subcontractor, or agent of contractor or subcontractor, foreman or employer who shall violate the provisions of RCW 49.28.010 through 49.28.030, shall be deemed guilty of misdemeanor and upon conviction shall be fined in a sum not less than twenty-five dollars nor more than two hundred dollars, or with imprisonment in the county jail for a period of not less than ten days nor more than ninety days, or both such fine and imprisonment, at the discretion of the court. [1899 c 101 § 3; RRS § 7644.]

49.28.040 Eight hour day, 1903 act—Policy enunciated. That it is a part of the public policy of the state of Washington that all work "by contract or day labor done" for it, or any political subdivision created by its laws, shall be performed in work days of not more than eight hours each, except in cases of extraordinary emergency. No case of extraordinary emergency shall be construed to exist in any case where other labor can be found to take the place of labor which has already been

employed for eight hours in any calendar day. [1903 c 44 § 1; RRS § 7645.]

49.28.050 Eight hour day, 1903 act—Contracts, cancellation of, for violations. All contracts for work for the state of Washington, or any political subdivision created by its laws, shall provide that they may be canceled by the officers or agents authorized to contract for or supervise the execution of such work, in case such work is not performed in accordance with the policy of the state relating to such work. [1903 c 44 § 2; RRS § 7646.]

49.28.060 Eight hour day, 1903 act—Stipulation in contracts—Duty of officers. It is made the duty of all officers or agents authorized to contract for work to be done in behalf of the state of Washington, or any political subdivision created under its laws, to stipulate in all contracts as provided for in RCW 49.28.040 through 49.28.060, and all such officers and agents, and all officers and agents entrusted with the supervision of work performed under such contracts, are authorized, and it is made their duty, to declare any contract canceled, the execution of which is not in accordance with the public policy of this state as herein declared. [1903 c 44 § 3; RRS § 7647.]

49.28.080 Hours of domestic employees. No male or female household or domestic employee shall be employed by any person for a longer period than sixty hours in any one week. Employed time shall include minutes or hours when the employee has to remain subject to the call of the employer and when the employee is not free to follow his or her inclinations. [1937 c 129 § 1; RRS § 7651-1. FORMER PARTS OF SECTION: (i) 1937 c 129 § 2; RRS § 7651-2, now codified as RCW 49.28.082. (ii) 1937 c 129 § 4; RRS § 7651-4, now codified as RCW 49.28.084.]

Severability—1937 c 129: "In the event any part of this act is held invalid such invalidity shall not affect the validity of the remainder of this act." [1937 c 129 § 3.] This applies to RCW 49.28.080 through 49.28.084.

49.28.082 Hours of domestic employees—Exception. In cases of emergency such employee may be employed for a longer period than sixty hours. [1937 c 129 § 2; RRS § 7651-2. Formerly RCW 49.28.080, part.]

49.28.084 Hours of domestic employees—Penalty. Any employer violating RCW 49.28.080 through 49.28.082 shall be guilty of a misdemeanor. [1937 c 129 § 4; RRS § 7651-4. Formerly RCW 49.28.080, part.]

49.28.100 Hours of operators of power equipment in waterfront operations. It shall be unlawful for any employer to permit any of his employees to operate on docks, in warehouses and/or in or on other waterfront properties any power driven mechanical equipment for the purpose of loading cargo on, or unloading cargo from, ships, barges, or other watercraft, or of assisting in such loading or unloading operations, for a period in excess of twelve and one-half hours at any one time

without giving such person an interval of eight hours' rest: *Provided, however,* The provisions of this section and RCW 49.28.110 shall not be applicable in cases of emergency, including fire, violent storms, leaking or sinking ships or services required by the armed forces of the United States. [1953 c 271 § 1.]

49.28.110 Hours of operators of power equipment in waterfront operations—Penalty. Any person violating the provisions of RCW 49.28.100 is guilty of a misdemeanor. [1953 c 271 § 2.]

**Chapter 49.32
INJUNCTIONS IN LABOR DISPUTES**

Sections

- 49.32.011 Injunctions in labor disputes.
- 49.32.020 Policy enunciated.
- 49.32.030 Undertakings and promises unenforceable.
- 49.32.050 Jurisdiction of courts.
- 49.32.060 Concert of action immaterial.
- 49.32.070 Responsibility of associations.
- 49.32.072 Injunctions—Hearings and findings—Temporary orders—Security.
- 49.32.073 Injunctions—Complaints, conditions precedent.
- 49.32.074 Injunctions—Findings and order essential.
- 49.32.080 Appellate review.
- 49.32.090 Contempts—Speedy jury trial.
- 49.32.100 Contempts—Retirement of judge.
- 49.32.110 Definitions.
- 49.32.900 Severability—1933 ex.s. c 7.
- 49.32.910 General repealer.

Labor unions—Injunctions in labor disputes—1919 act: Chapter 49.36 RCW.

49.32.011 Injunctions in labor disputes. No court of the state of Washington or any judge or judges thereof shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter. [1933 ex.s. c 7 § 1; RRS § 7612-1. Cf. 1919 c 185 § 2. Formerly RCW 49.32.040.]

Injunctions in labor disputes: RCW 49.36.015.

49.32.020 Policy enunciated. In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the state of Washington, as such jurisdiction and authority are herein defined and limited, the public policy of the state of Washington is hereby declared as follows:

WHEREAS, Under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of

his employment, and that he shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protections; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the state of Washington are hereby enacted. [1933 ex.s. c 7 § 2; RRS § 7612-2.]

49.32.030 Undertakings and promises unenforceable. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in RCW 49.32.020, is hereby declared to be contrary to the public policy of the state of Washington, shall not be enforceable in any court of the state of Washington, and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation and any employee or prospective employee of the same, whereby—

(1) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(2) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization. [1933 ex.s. c 7 § 3; RRS § 7612-3.]

49.32.050 Jurisdiction of courts. No court of the state of Washington shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute or prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(1) Ceasing or refusing to perform any work or to remain in any relation of employment;

(2) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in RCW 49.32.030;

(3) Paying or giving to, or withholding from, any person participating or interested in such labor dispute any strike or unemployment benefits or insurance or other moneys or things of value;

(4) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any state;

(5) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(6) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(7) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(8) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(9) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in RCW 49.32.030. [1933 ex.s. c 7 § 4; RRS § 7612-4.]

49.32.060 Concert of action immaterial. No court of the state of Washington or any judge or judges thereof shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in RCW 49.32.050. [1933 ex.s. c 7 § 5; RRS § 7612-5.]

49.32.070 Responsibility of associations. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the state of Washington for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof. [1933 ex.s. c 7 § 6; RRS § 7612-6.]

49.32.072 Injunctions—Hearings and findings—Temporary orders—Security. No court of the state of Washington or any judge or judges thereof shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(1) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(2) That substantial and irreparable injury to complainant's property will follow;

(3) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(4) That complainant has no adequate remedy at law; and

(5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity. [1933 ex.s. c 7 § 7; RRS § 7612-7.]

Reviser's note: This section was declared unconstitutional in *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 Pac. (2d) 397.

49.32.073 Injunctions—Complaints, conditions precedent. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. [1933 ex.s. c 7 § 8; RRS § 7612-8.]

Reviser's note: This section was declared unconstitutional in *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 Pac. (2d) 397.

49.32.074 Injunctions—Findings and order essential. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute, shall include only a prohibition of such specific act or acts as may be expressly complained of in the complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein. [1933 ex.s. c 7 § 9; RRS § 7612-9.]

Reviser's note: This section was declared unconstitutional in *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 Pac. (2d) 397.

49.32.080 Appellate review. Whenever any court of the state of Washington shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings, and on his filing the usual bond for costs, forthwith certify the entire record of the case, including a transcript of the evidence taken, to the supreme court or the court of appeals for its review. Upon the filing of such record in the supreme court or the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character. [1971 c 81 § 116; 1933 ex.s. c 7 § 10; RRS § 7612-10.]

49.32.090 Contempts—Speedy jury trial. In all cases arising under this chapter in which a person shall be charged with contempt in a court of the state of Washington, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county wherein the contempt shall have been committed: *Provided*, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct or disobedience of any officer of the court in respect to the writs, orders, or process of the court. [1933 ex.s. c 7 § 11; RRS § 7612-11.]

49.32.100 Contempts—Retirement of judge. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as provided by law. The demand shall be filed prior to the hearing of the contempt proceeding. [1933 ex.s. c 7 § 12; RRS § 7612-12.]

Civil procedure—Prejudice of judge—Change of venue: RCW 4.12.040.

49.32.110 Definitions. When used in this chapter, and for the purpose of this chapter—

(1) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (a) between one or more employers or associations of employers and one or more employees or associations of employees; (b) between one or more employers or associations of employers and one or more employees or association of employees; or (c) between one or more employees or association of employees and one or more employees or association of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(2) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which dispute occurs, or has a direct or indirect interest therein or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(3) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee. [1933 ex.s. c 7 § 13; RRS § 7612-13. Formerly RCW 49.32.010.]

49.32.900 Severability—1933 ex.s. c 7. If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional, or otherwise invalid, the remaining provisions of the chapter and the application of such provisions to other persons or circumstances shall not be affected thereby. [1933 ex.s. c 7 § 14; RRS § 7612-14.]

49.32.910 General repealer. All acts and parts of acts in conflict with the provisions of this chapter are hereby repealed. [1933 ex.s. c 7 § 15; RRS § 7612-15.]

Chapter 49.36 LABOR UNIONS

Sections

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| 49.36.010 | Unions legalized. |
| 49.36.015 | Injunctions in labor disputes. |
| 49.36.020 | Employment contracts—Remedy for violation. |
| 49.36.030 | Prosecutions prohibited. |

Collective bargaining with employees of city owned utilities: RCW 35.22.350.

Discrimination, law against—Unfair practices: RCW 49.60.180-49.60.215, 49.60.220.

Prohibited practices: Chapter 49.44 RCW.

Supervisor of industrial relations: RCW 43.22.260.

49.36.010 Unions legalized. It shall be lawful for working men and women to organize themselves into, or carry on labor unions for the purpose of lessening the hours of labor or increasing the wages or bettering the conditions of the members of such organizations; or carry out their legitimate purposes by any lawful means. [1919 c 185 § 1; RRS § 7611.]

49.36.015 Injunctions in labor disputes. No restraining order or injunction shall be granted by any court of this state, or any judge or judges thereof in any case between an employer and employee or between employer and employees or between employees or between persons employed and persons seeking employment involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable damage to property or to a personal right or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such petition must be in writing describing such damage or injury feared by the applicant, and sworn to by the applicant or his agent or attorney. No such restraining order or injunction shall prohibit any such person or persons, whether singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor; or from paying or giving to, or withholding from any person engaged in such dispute, any strike benefits or other moneys or things of value; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this section be considered or held to be illegal or unlawful in any court of the state. [1919 c 185 § 2; RRS § 7612.]

Labor disputes act: Chapter 49.32 RCW.

49.36.020 Employment contracts—Remedy for violation. The labor of a human being is not a commodity or article of commerce, and the right to enter into the relation of employer and employee or to change that relation except in violation of contract is a legal right. In all cases involving the violation of the contract of employment, either by the employee or employer where no irreparable damage is about to be done to the property, personal rights or property rights of either, no injunction shall be granted, but the parties shall be left to their remedy at law. [1919 c 185 § 3; RRS § 7613.]

Injunctions in labor disputes: RCW 49.32.011.

49.36.030 Prosecutions prohibited. No person shall be indicted, prosecuted, or tried in any court of this state for entering into or carrying on any lawful arrangement, agreement, or combination between themselves made with a view of lessening the number of hours of labor or increasing wages or bettering the conditions of working men and women, or for any lawful act done in pursuance thereof. [1919 c 185 § 4; RRS § 7614.]

Chapter 49.40 SEASONAL LABOR

Sections

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| 49.40.010 | Seasonal labor defined. |
| 49.40.020 | Contracts to be in writing—Advances. |
| 49.40.030 | Fraud in securing advances—Penalty. |
| 49.40.040 | Disputes determined by director of labor and industries. |
| 49.40.050 | Hearings. |
| 49.40.060 | Findings and award. |
| 49.40.070 | Court appeal. |
| 49.40.080 | Findings and award as evidence. |

49.40.010 Seasonal labor defined. For the purpose of this chapter the term "seasonal labor" shall include all work performed by any person employed for a period of time greater than one month and where the wages for such work are not to be paid at any fixed interval of time, but at the termination of such employment, and where such person is hired within this state for work to be performed outside the state and the wages earned during said employment are to be paid in this state at the termination of such employment: *Provided*, That this chapter shall not apply to wages earned by seamen or other persons where the payment of their wages is regulated by federal statutes. [1919 c 191 § 1; RRS § 7603.]

49.40.020 Contracts to be in writing—Advances. Every contract for seasonal labor shall be in writing and signed by the employer and the employee, and may provide for advances of moneys to be earned under such contract or for the furnishing of supplies to the employee before the wages are earned, and for the payment of money or the furnishing of supplies during the season. [1919 c 191 § 2; RRS § 7604.]

49.40.030 Fraud in securing advances—Penalty. Every employee who with intent to defraud shall have secured advances of money or supplies under a contract for reasonable labor and who with intent to defraud shall wilfully fail to perform sufficient labor to compensate for such advances and supplies made under such contract shall be guilty of a gross misdemeanor. [1919 c 191 § 3; RRS § 7605.]

49.40.040 Disputes determined by director of labor and industries. Upon the written petition of either the employer or the employee setting forth in ordinary and concise language the facts and questions in dispute, the director of labor and industries shall, in person or by his duly authorized deputy, and is hereby authorized to hear and determine all disputes concerning wages earned at seasonal labor, and allow or reject deductions made from such wages for moneys advanced or supplies furnished before the wages are earned for money paid or supplies furnished during the season or for money paid to third persons upon the written order of the employee. [1919 c 191 § 4; RRS § 7606.]

49.40.050 Hearings. Upon the filing of any such petition, the director of labor and industries shall notify the other party to the dispute of the time and place when and where such petition will be heard, and may

set said petition for a hearing before a regularly appointed deputy at such place in the state as he shall determine is most convenient for the parties, and the director or his deputy shall have power and authority to issue subpoenas to compel the attendance of witnesses and the production of books, papers and records at such hearing, and to administer oaths. Obedience to such subpoenas shall be enforced by the courts of the county where such hearing is held. [1919 c 191 § 5; RRS § 7607.]

49.40.060 Findings and award. The director of labor and industries, or his deputy holding the hearing shall, after such hearing, determine the amount due from the employer to the employee, and shall make findings of fact and an award in accordance therewith, which findings and award shall be filed in the office of the director and a copy thereof served upon the employer and upon the employee by registered mail directed to their last known post office address. [1919 c 191 § 6; RRS § 7608.]

49.40.070 Court appeal. Any person feeling himself aggrieved by the finding or award of the director of labor and industries may, as in RCW 49.40.060 provided, have the right of appeal therefrom to the superior court of the county in which the hearing by the director or his deputy was held, by filing a notice of appeal therefrom in the office of the director within thirty days from the date of the findings and award and, upon the filing of any such notice of appeal, the director shall transmit to the clerk of the superior court to which the appeal is taken the original petition and all exhibits and written evidence filed at the hearing and the original findings and award of the director, and such appeal shall be set down for hearing and shall be heard de novo by the court as appeals from justices of the peace are heard, and the clerk of the court shall notify the parties to the dispute, by mail addressed to their last known place of residence, of the time and place of such trial upon appeal. [1919 c 191 § 7; RRS § 7609.]

49.40.080 Findings and award as evidence. In case no appeal is taken from the award of the director of labor and industries and suit shall be brought upon the contract for seasonal labor in any court of competent jurisdiction, the findings and award of the director made in any proceeding under this chapter at a hearing at which both parties to such suit shall have appeared may be introduced in evidence in such suit, for the information of the court in which the suit is pending, and may, in the discretion of the court, be submitted to the jury as a part of the evidence in the case; but such findings and award shall not be conclusive or binding upon the court or the jury in any such case. [1919 c 191 § 8; RRS § 7610.]

Chapter 49.44

VIOLATIONS—PROHIBITED PRACTICES

Sections

- 49.44.010 Blacklisting—Penalty.
49.44.020 Bribery of labor representative.

- 49.44.030 Labor representative receiving bribe.
49.44.040 Obtaining employment by false letter or certificate.
49.44.050 Fraud by employment agent.
49.44.060 Corrupt influencing of agent.
49.44.070 Grafting by employee.
49.44.080 Endangering life by refusal to labor.
49.44.090 Unfair practices in employment because of age of employee or applicant—Exceptions.
49.44.100 Bringing in out of state persons to replace employees involved in labor dispute.
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49.44.130 Requiring lie detector tests—Penalty.

Blind or handicapped persons, discriminating against: Chapter 70.84 RCW.

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Discrimination, law against—Unfair practices: RCW 49.60.180-49.60.200.

Enforced labor by kidnapping: RCW 9.52.030.

Wilful destruction or injury to tools, implements or machinery: RCW 9.61.040.

49.44.010 Blacklisting—Penalty. Every person in this state who shall wilfully and maliciously, send or deliver, or make or cause to be made, for the purpose of being delivered or sent or part with the possession of any paper, letter or writing, with or without name signed thereto, or signed with a fictitious name, or with any letter, mark or other designation, or publish or cause to be published any statement for the purpose of preventing any other person from obtaining employment in this state or elsewhere, and every person who shall wilfully and maliciously "blacklist" or cause to be "blacklisted" any person or persons, by writing, printing or publishing, or causing the same to be done, the name, or mark, or designation representing the name of any person in any paper, pamphlet, circular or book, together with any statement concerning persons so named, or publish or cause to be published that any person is a member of any secret organization, for the purpose of preventing such person from securing employment, or who shall wilfully and maliciously make or issue any statement or paper that will tend to influence or prejudice the mind of any employer against the person of such person seeking employment, or any person who shall do any of the things mentioned in this section for the purpose of causing the discharge of any person employed by any railroad or other company, corporation, individual or individuals, shall, on conviction thereof, be adjudged guilty of misdemeanor and punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than ninety days nor more than one year, or by both such fine and imprisonment. [1899 c 23 § 1; RRS § 7599.]

Extortion, blackmail, coercion: Chapter 9.33 RCW.

Interference with or discharge from employment of member of organized militia: RCW 38.40.040, 38.40.050.

Libel and slander: Chapter 9.58 RCW.

49.44.020 Bribery of labor representative. Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any duly constituted representative of a labor organization, with intent to influence him in respect to any of his

acts, decisions or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person or corporation, shall be guilty of a gross misdemeanor. [1909 c 249 § 424; RRS § 2676.]

49.44.030 Labor representative receiving bribe. Every person who, being the duly constituted representative of a labor organization, shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon any agreement or understanding that any of his acts, decisions or other duties as such representative, or any act to prevent or cause a strike of the employees of any person or corporation shall be influenced thereby, shall be guilty of a gross misdemeanor. [1909 c 249 § 425; RRS § 2677.]

49.44.040 Obtaining employment by false letter or certificate. Every person who shall obtain employment or appointment to any office or place of trust, by color or aid of any false or forged letter or certificate of recommendation, shall be guilty of a misdemeanor. [1909 c 249 § 371; RRS § 2623.]

False pretenses: Chapter 9.37 RCW.

False representations: Chapter 9.38 RCW.

49.44.050 Fraud by employment agent. Every employment agent or broker who, with intent to influence the action of any person thereby, shall misstate or misrepresent verbally, or in any writing or advertisement, any material matter relating to the demand for labor, the conditions under which any labor or service is to be performed, the duration thereof or the wages to be paid therefor, shall be guilty of a misdemeanor. [1909 c 249 § 372; RRS § 2624.]

Discrimination, law against—Unfair practices of employment agencies: RCW 49.60.200.

False advertising: RCW 9.04.010.

49.44.060 Corrupt influencing of agent. Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any agent, employee or servant of any person or corporation, with intent to influence his action in relation to his principal's, employer's or master's business, shall be guilty of a gross misdemeanor. [1909 c 249 § 426; RRS § 2678.]

49.44.070 Grafting by employee. Every agent, employee or servant of any person or corporation who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon any agreement or understanding that he shall act in any particular manner in connection with his principal's, employer's or master's business; or who, being authorized to purchase or contract for materials, supplies or other articles or to employ servants or labor for his principal, employer or master, shall ask or receive, directly or indirectly, for himself or another, a commission, discount, bonus or promise thereof from any person with whom he may deal in relation to such matters, shall be guilty of a gross misdemeanor. [1909 c 249 § 427; RRS § 2679.]

Frauds and swindles: Chapter 9.45 RCW.

Larceny: Chapter 9.54 RCW.

49.44.080 Endangering life by refusal to labor. Every person who shall wilfully and maliciously, either alone or in combination with others, break a contract of service or employment, knowing or having reasonable cause to believe that the consequence of his so doing will be to endanger human life or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, shall be guilty of a misdemeanor. [1909 c 249 § 281; RRS § 2533.]

Injunctions in labor disputes: Chapter 49.32 RCW.

Labor unions—Injunctions in labor disputes: RCW 49.36.015.

49.44.090 Unfair practices in employment because of age of employee or applicant—Exceptions. It shall be an unfair practice:

(1) For an employer or licensing agency, because an individual is between the ages of forty and sixty-five, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment: *Provided*, That employers or licensing agencies may establish reasonable minimum and/or maximum age limits with respect to candidates for positions of employment, which positions are of such a nature as to require extraordinary physical effort, endurance, condition or training, subject to the approval of the director of labor and industries through the division of industrial relations.

(2) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination respecting individuals between the ages of forty and sixty-five: *Provided*, That nothing herein shall forbid a requirement of disclosure of birth date upon any form of application for employment or by the production of a birth certificate or other sufficient evidence of the applicant's true age.

Nothing contained in this section or in RCW 49.60.180 as to age shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this section; nor shall anything in this section or in RCW 49.60.180 be deemed to preclude the varying of insurance coverages according to an employee's age; nor shall this section be construed as applying to any state, county, or city law enforcement agencies, or as superseding any law fixing or authorizing the establishment of reasonable minimum or maximum age limits with respect to candidates for certain positions in public employment which are of such a nature as to require extraordinary physical effort, or which for other reasons warrant consideration of age factors. [1961 c 100 § 5.]

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Unfair practices, discrimination because of age: RCW 49.60.180-49.60.200.

49.44.100 Bringing in out of state persons to replace employees involved in labor dispute. It shall be unlawful for any person, firm or corporation not directly involved in a labor strike or lockout to recruit and bring into this state from outside this state any person or persons for employment, or to secure or offer to secure for such person or persons any employment, when the purpose of such recruiting, securing or offering to secure employment, is to have such persons take the place in employment of employees in a business owned by a person, firm or corporation involved in a labor strike or lockout, or to have such persons act as pickets of a business owned by a person, firm or corporation where a labor strike or lockout exists: *Provided*, That this section and RCW 49.44.110 shall not apply to activities and services offered by or through the Washington employment security department. [1961 c 180 § 1.]

49.44.110 Bringing in out of state persons to replace employees involved in labor dispute—Penalty. Any person violating the provisions of RCW 49.44.100 shall be guilty of a gross misdemeanor. [1961 c 180 § 2.]

49.44.120 Requiring lie detector tests. It shall be unlawful for any person, firm, corporation or the state of Washington, its political subdivisions or municipal corporations to require any employee or prospective employee to take or be subjected to any lie detector or similar tests as a condition of employment or continued employment: *Provided*, That this section shall not apply to persons making initial application for employment with any law enforcement agency: *Provided further*, That this section shall not apply to either the initial application for employment or continued employment of persons who dispense controlled substances as defined in chapter 69.50 RCW, or to persons in sensitive positions directly involving national security, or to persons in the field of public law enforcement who are seeking promotion to a rank of captain or higher. [1973 c 145 § 1; 1965 c 152 § 1.]

49.44.130 Requiring lie detector tests—Penalty. Any person violating the provisions of RCW 49.44.120 shall be guilty of a gross misdemeanor. [1965 c 152 § 2.]

**Chapter 49.46
MINIMUM WAGE ACT**

Sections

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| 49.46.005 | Declaration of necessity and police power. |
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49.46.005 Declaration of necessity and police power. Whereas the establishment of a minimum wage for employees is a subject of vital and imminent concern to the people of this state and requires appropriate action by the legislature to establish minimum standards of employment within the state of Washington, therefore the legislature declares that in its considered judgment the health, safety and the general welfare of the citizens of this state require the enactment of this measure, and exercising its police power, the legislature endeavors by this chapter to establish a minimum wage for employees of this state to encourage employment opportunities within the state. 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, safety and welfare of the people of this state. [1961 ex.s. c 18 § 1.]

49.46.010 Definitions. As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by regulations of the director under *RCW 49.46.050;

(3) "Employ" includes to suffer or to permit to work;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; and the exclusions from the term "employee" provided in this item shall not be deemed applicable with respect to commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection

with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(b) Any individual employed in domestic service in or about a private home;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the director);

(d) Any individual employed by the United States;

(e) Any individual engaged in the activities of an educational, charitable, religious, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously;

(f) Any newspaper vendor or carrier;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by the state, any county, city, or town, municipal corporation or quasi-municipal corporation, political subdivision, or any instrumentality thereof;

(j) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(k) Any individual whose duties require that he reside or sleep at the place of his employment or who otherwise spends a substantial portion of his work time subject to call, and not engaged in the performance of active duties.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed. [1974 1st ex.s. c 107 § 1; 1961 ex.s. c 18 § 2; 1959 c 294 § 1.]

*Reviser's note: RCW 49.46.050 referred to in subsection (2) was repealed by 1961 ex.s. c 18 § 7. See RCW 49.46.080.

49.46.020 Minimum hourly wage. Every employer shall pay to each of his employees who have reached the age of eighteen years wages at a rate of not less than one dollar and sixty cents per hour except as may be otherwise provided under this chapter: *Provided*, That beginning the calendar year 1974, the applicable rate under this section shall be one dollar and eighty cents per hour, and beginning the calendar year 1975 the applicable rate under this section shall be two dollars an hour. [1973 2nd ex.s. c 9 § 1; 1967 ex.s. c 80 § 1; 1961 ex.s. c 18 § 3; 1959 c 294 § 2.]

49.46.025 College student exemption. The provisions of RCW 49.46.020, as amended by 1961 ex.s. c 18 § 2, shall not apply to any student enrolled in an institution of higher education who is employed by such institution. [1961 ex.s. c 18 § 5.]

Reviser's note: The reference to 1961 ex.s. c 18 § 2 appears to be erroneous. RCW 49.46.020 was amended by 1961 ex.s. c 18 § 3.

49.46.040 Investigations—Services of federal agencies—Employer's records—Industrial homework. (1) The director or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter.

(2) With the consent and cooperation of federal agencies charged with the administration of federal labor laws, the director may, for the purpose of carrying out his functions and duties under this chapter, utilize the services of federal agencies and their employees and, notwithstanding any other provision of law, may reimburse such federal agencies and their employees for services rendered for such purposes.

(3) Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make reports therefrom to the director as he shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations thereunder.

(4) The director is authorized to make such regulations regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations of the director relating to industrial homework are hereby continued in full force and effect. [1959 c 294 § 4.]

49.46.060 Exceptions for learners, apprentices, messengers, disabled. The director, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations provide for (1) the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the director, at such wages lower than the minimum wage applicable under RCW 49.46.020 and subject to such limitations as to time, number, proportion, and length of service as the director shall prescribe, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the minimum wage applicable under RCW 49.46.020 and for such period as shall be fixed in such certificates. [1959 c 294 § 6.]

49.46.070 Records of employer—Contents—Inspection—Sworn statement. Every employer subject to any provision of this chapter or of any regulation issued under this chapter shall make, and keep in or about the premises wherein any employee is employed, a record of the name, address, and occupation of each of his employees, the rate of pay, and the amount paid each pay period to each such employee, the hours worked each day and each work week by such employee, and such other information as the director shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this chapter or of the regulations thereunder. Such records shall be open for inspection or transcription by the director or his authorized representative at any reasonable time. Every such employer shall furnish to the director or to his authorized representative on demand a sworn statement of such records and information upon forms prescribed or approved by the director. [1959 c 294 § 7.]

49.46.080 New or modified regulations—Judicial review—Stay. (1) As new regulations or changes or modification of previously established regulations are proposed, the director shall call a public hearing for the purpose of the consideration and establishment of such regulations following the procedures used in the promulgation of standards of safety under RCW 49.16.080, 49.16.090 and 49.16.100, as amended.

(2) Any interested party may obtain a review of the director's findings and order in the superior court of county of petitioners' residence by filing in such court within sixty days after the date of publication of such regulation a written petition praying that the regulation be modified or set aside. A copy of such petition shall be served upon the director. The finding of facts, if supported by evidence, shall be conclusive upon the court. The court shall determine whether the regulation is in accordance with law. If the court determines that such regulation is not in accordance with law, it shall remand the case to the director with directions to modify or revoke such regulation. If application is made to the court for leave to adduce additional evidence by any aggrieved party, such party shall show to the satisfaction of the court that such additional evidence is material, and that there were reasonable grounds for the failure to adduce such evidence before the director. If the court finds that such evidence is material and that reasonable grounds exist for failure of the aggrieved party to adduce such evidence in prior proceedings, the court may remand the case to the director with directions that such additional evidence be taken before the director. The director may modify the findings and conclusions, in whole or in part, by reason of such additional evidence.

(3) The judgment and decree of the court shall be final except that it shall be subject to review by the supreme court or the court of appeals as in other civil cases.

(4) The proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of an administrative regulation issued under the provisions of this chapter. The court shall not grant any stay

of an administrative regulation unless the person complaining of such regulation shall file in the court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the regulation, in the event such regulation is affirmed, of the amount by which the compensation such employees are entitled to receive under the regulation exceeds the compensation they actually receive while such stay is in effect. [1971 c 81 § 117; 1959 c 294 § 8.]

49.46.090 Payment of wages less than chapter requirements—Employer's liability—Assignment of wage claim. (1) Any employer who pays any employee less than wages to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount of such wage rate, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court. Any agreement between such employee and the employer to work for less than such wage rate shall be no defense to such action.

(2) At the written request of any employee paid less than the wages to which he is entitled under or by virtue of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. [1959 c 294 § 9.]

49.46.100 Prohibited acts of employer—Penalty. (1) Any employer who hinders or delays the director or his authorized representatives in the performance of his duties in the enforcement of this chapter, or refuses to admit the director or his authorized representatives to any place of employment, or fails to make, keep, and preserve any records as required under the provisions of this chapter, or falsifies any such record, or refuses to make any record accessible to the director or his authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the director or his authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this chapter, or otherwise violates any provision of this chapter or of any regulation issued under this chapter shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

(2) Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the director, or his authorized representatives that he has not been paid wages in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding shall be

deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor. [1959 c 294 § 10.]

49.46.110 Collective bargaining not impaired. Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of this chapter. [1959 c 294 § 11.]

49.46.120 Chapter establishes minimum standards and is supplementary to other laws—More favorable standards unaffected. This chapter establishes a minimum standard for wages and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, or other working conditions established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law. [1961 ex.s. c 18 § 4; 1959 c 294 § 12.]

49.46.900 Severability—1959 c 294. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter and the application thereof to other persons or circumstances shall not be affected thereby. [1959 c 294 § 13.]

49.46.910 Short title. This chapter may be known and cited as the "Washington Minimum Wage Act." [1961 ex.s. c 18 § 6; 1959 c 294 § 14.]

Chapter 49.48

WAGES—PAYMENT—COLLECTION

Sections

- 49.48.010 Payment of wages due to employee ceasing work to be at end of pay period—Exceptions—Authorized deductions or withholdings.
- 49.48.020 Penalty for noncompliance with RCW 49.48.010 through 49.48.030 and 49.48.060.
- 49.48.030 Attorney's fee in action on wages—Exception.
- 49.48.040 Assignment to director of wage claims—Collection by suit.
- 49.48.050 Remedy cumulative.
- 49.48.060 Director may require bond after assignment of wage claims—Court action—Penalty for failure to pay wage claim.
- 49.48.070 Enforcement.
- 49.48.080 Public employees excluded.
- 49.48.090 Assignment of wages—Requisites to validity.
- 49.48.100 Written consent of spouse required.
- 49.48.115 Employer defined.
- 49.48.120 Payment on employee's death.

Chattel liens: Chapter 60.08 RCW.

*Contractor failing to pay for labor and material: RCW 9.54.080.
Mechanics' and materialmen's liens: Chapter 60.04 RCW.*

49.48.010 Payment of wages due to employee ceasing work to be at end of pay period—Exceptions—Authorized deductions or withholdings. When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period: *Provided, however,* That this paragraph shall not apply when workers are engaged in an employment that normally involves working for several employers in the same industry interchangeably, and the several employers or some of them cooperate to establish a plan for the weekly payment of wages at a central place or places and in accordance with a unified schedule of paydays providing for at least one payday each week; but this subsection shall not apply to any such plan until ten days after notice of their intention to set up such a plan shall have been given to the director of labor and industries by the employers who cooperate to establish the plan; and having once been established, no such plan can be abandoned except after notice of their intention to abandon such plan has been given to the director of labor and industries by the employers intending to abandon the plan: *Provided further,* That the duty to pay an employee forthwith shall not apply if the labor-management agreement under which the employee has been employed provides otherwise.

It shall be unlawful for any employer to withhold or divert any portion of an employee's wages unless the deduction is:

- (1) Required by state or federal law; or
- (2) Specifically agreed upon orally or in writing by the employee and employer; or
- (3) For medical, surgical or hospital care or service, pursuant to any rule or regulation: *Provided, however,* That the deduction is openly, clearly and in due course recorded in the employer's books and records.

Paragraph three of this section shall not be construed to affect the right of any employer or former employer to sue upon or collect any debt owed to said employer or former employer by his employees or former employees. [1971 ex.s. c 55 § 1; 1947 c 181 § 1; 1905 c 112 § 1; 1888 c 128 § 1; Rem. Supp. 1947 § 7594.]

Saving—1888 c 128: "This act is not to be construed as affecting any bona fide contract heretofore entered into contrary to its provisions and existing at the date of the passage hereof, and continuing by reason of limitation of said contract being still in force." [1888 c 128 § 4; no RRS.]

Effective date—1888 c 128: "This act is to take effect on and after its approval." [1888 c 128 § 5; no RRS.]

General repealer—1888 c 128: "All laws or parts of laws in conflict with this act be and the same are hereby repealed." [1888 c 128 § 6; no RRS.] The foregoing annotations apply to RCW 49.48.010 through 49.48.030.

49.48.020 Penalty for noncompliance with RCW 49.48.010 through 49.48.030 and 49.48.060. Any person, firm, or corporation which violates any of the provisions of RCW 49.48.010 through 49.48.030 and 49.48.060 shall be guilty of a misdemeanor. [1971 ex.s. c 55 § 2; 1933 ex.s. c 20 § 1; 1888 c 128 § 2; RRS § 7595.]

Wages—Deductions—Rebates, authorized withholding: RCW 49.52.060.

49.48.030 Attorney's fee in action on wages—
Exception. In any action in which any person is successful in recovering judgment for wages or salary owed to him, reasonable attorney's fees, in an amount to be determined by the court, shall be assessed against said employer or former employer: *Provided, however,* That this section shall not apply if the amount of recovery is less than or equal to the amount admitted by the employer to be owing for said wages or salary. [1971 ex.s. c 55 § 3; 1888 c 128 § 3; RRS § 7596.]

49.48.040 Assignment to director of wage claims—
Collection by suit. The director of labor and industries by and through the division of industrial relations shall have the power and authority, when in his judgment he deems it necessary, to take assignments of wage claims and prosecute actions for the collection of wages of persons who are financially unable to employ counsel in cases in which, in the judgment of the director, the claims for wages are valid and enforceable in the courts; and the said director, and any supervisor and any other person in the employ of the department of labor and industries, duly designated by them, or either or any of them, shall have authority to issue subpoenas, to compel the attendance of witnesses or parties and the production of books, papers or records, and to administer oaths and to examine witnesses under oath, and to take the verification of proof of instruments of writing and to take depositions and affidavits for the purpose of carrying out the provisions of RCW 49.48.040 through 49.48.080. When such assignments for wage claims are taken, no court costs shall be payable by said director for prosecuting such suits. The director shall have a seal inscribed "Department of Labor and Industries—State of Washington" and all courts shall take judicial notice of such seal. Obedience to subpoenas issued by the director, a supervisor or a duly authorized representative shall be enforced by the courts in any county. The director, the supervisors and the authorized representatives shall have free access to all places and works of labor, and any employer, or any agent or employee of such employer, who shall refuse them, or any of them, admission therein, or who shall, when requested by them, or any of them, wilfully neglect or refuse to furnish them, or any of them, any statistics or information pertaining to his lawful duties, which may be in his possession or under the control of said employer, or agent, shall be guilty of a misdemeanor. [1935 c 96 § 1; RRS § 7596-1.]

49.48.050 Remedy cumulative. Nothing herein contained shall be construed to limit the authority of the prosecuting attorney of any county to prosecute actions, both civil and criminal, for such violations of RCW 49.48.040 through 49.48.080 as may come to his knowledge, or to enforce the provisions hereof independently and without specific direction of the director of labor and industries. [1935 c 96 § 2; RRS § 7596-2.]

49.48.060 Director may require bond after assignment of wage claims—Court action—Penalty for failure to pay wage claim. (1) If upon investigation by the director, after taking assignments of any wage claim under RCW 49.48.040, it appears to the director that the employer is representing to his employees that he is able to pay wages for their services and that the employees are not being paid for their services, the director may require the employer to give a bond in such sum as the director deems reasonable and adequate in the circumstances, with sufficient surety, conditioned that the employer will for a definite future period not exceeding six months conduct his business and pay his employees in accordance with the laws of the state of Washington.

(2) If within ten days after demand for such bond the employer fails to provide the same, the director may commence a suit against the employer in the superior court of appropriate jurisdiction to compel him to furnish such bond or cease doing business until he has done so. The employer shall have the burden of proving the amount thereof to be excessive.

(3) If the court finds that there is just cause for requiring such bond and that the same is reasonable, necessary or appropriate to secure the prompt payment of the wages of the employees of such employer and his compliance with RCW 49.48.010 through 49.48.080, the court shall enjoin such employer from doing business in this state until the requirement is met, or shall make other, and may make further, orders appropriate to compel compliance with the requirement.

Upon being informed of a wage claim against an employer or former employer, the director shall, if such claim appears to be just, immediately notify the employer or former employer, of such claim by mail. If the employer or former employer fails to pay the claim or make satisfactory explanation to the director of his failure to do so, within thirty days thereafter, the employer or former employer shall be liable to a penalty of ten percent of that portion of the claim found to be justly due. The director shall have a cause of action against the employer or former employer for the recovery of such penalty, and the same may be included in any subsequent action by the director on said wage claim, or may be exercised separately after adjustment of such wage claim without court action. [1971 ex.s. c 55 § 4; 1935 c 96 § 3; RRS § 7596-3.]

49.48.070 Enforcement. It shall be the duty of the director of labor and industries to inquire diligently for any violations of RCW 49.48.040 through 49.48.080, and to institute the actions for penalties herein provided, and to enforce generally the provisions of RCW 49.48.040 through 49.48.080. [1935 c 96 § 4; RRS § 7596-4.]

49.48.080 Public employees excluded. Nothing in RCW 49.48.040 through 49.48.080 shall apply to the payment of wages or compensation of employees directly employed by any county, incorporated city or town, or other municipal corporation. Nor shall anything herein apply to employees, directly employed by

the state, any department, bureau, office, board, commission or institution hereof. [1935 c 96 § 5; RRS § 7596-5.]

49.48.090 Assignment of wages—Requisites to validity. No assignment of, or order for, wages to be earned in the future to secure a loan of less than three hundred dollars, shall be valid against an employer of the person making said assignment or order unless said assignment or order is accepted in writing by the employer, and said assignment or order, and the acceptance of the same, have been filed and recorded with the county auditor of the county where the party making said assignment or order resides, if a resident of the state, or in which he is employed, if not a resident of the state. [1909 c 32 § 1; RRS § 7597.]

49.48.100 Written consent of spouse required. No assignment of, or order for, wages to be earned in the future shall be valid, when made by a married person, unless the written consent of the other spouse to the making of such assignment or order is attached thereto. [1972 ex.s. c 108 § 7; 1909 c 32 § 2; RRS § 7598.]

49.48.115 Employer defined. For the purposes of RCW 49.48.120 the word "employer" shall include every person, firm, partnership, corporation, the state of Washington, and all municipal corporations. [1939 c 139 § 1; RRS § 1464-1. Formerly RCW 49.48.120, part.]

49.48.120 Payment on employee's death. If at the time of the death of any person, his employer is indebted to him for work, labor, and services performed, and no executor or administrator of his estate has been appointed, such employer shall upon the request of the surviving spouse forthwith pay said indebtedness, in such an amount as may be due not exceeding the sum of one thousand dollars, to the said surviving spouse or if the decedent leaves no surviving spouse, then to the child or children, or if no children, then to the father or mother of said decedent: *Provided, however,* That if by virtue of a community property agreement between the decedent and the surviving spouse, which meets the requirements of RCW 26.16.120, the right to such indebtedness became the sole property of the surviving spouse upon the death of the decedent, the employer shall pay to the surviving spouse the total of such indebtedness or that portion which is governed by the community property agreement upon presentation of said agreement accompanied by affidavit of the surviving spouse stating that such agreement was executed in good faith between the parties thereto and had not been rescinded by the parties prior to the death of the decedent: *Provided further,* That in all cases the employer shall require proof of claimant's relationship to decedent by affidavit, and shall require claimant to acknowledge receipt of such payment in writing. Any payments made by an employer pursuant to the provisions of RCW 49.48.115 and 49.48.120 shall operate as a full and complete discharge of the employer's indebtedness to the extent of

said payment, and no employer shall thereafter be liable therefor to the decedent's estate, or the decedent's executor or administrator thereafter appointed. The employer may also pay the indebtedness upon presentation of an affidavit as provided in RCW 11.62.010. [1974 1st ex.s. c 117 § 42; 1967 c 210 § 1; 1939 c 139 § 2; RRS § 1464-2. FORMER PART OF SECTION: 1939 c 139 § 1; RRS § 1464-1 now codified as RCW 49.48.115.]

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

Chapter 49.52 WAGES—DEDUCTIONS—REBATES

Sections

| | |
|-----------|---|
| 49.52.010 | Employees' benefit deductions are trust funds. |
| 49.52.020 | Lien of party rendering service. |
| 49.52.030 | Deductions in extrahazardous employment—Medical aid fund deductions excluded. |
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Chattel liens: Chapter 60.08 RCW.

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Employee welfare trust funds: Chapter 48.52 RCW.

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

Mutual savings bank employees, pension benefits: RCW 32.04.082.

Public employees, payroll deductions: RCW 41.04.020, 41.04.030, 41.04.035 and 41.04.036.

49.52.010 Employees' benefit deductions are trust funds. All moneys collected by any employer from his or its employees for furnishing, either directly, or through contract, or arrangement with a hospital association, corporation, firm or individual, of medicine, medical or surgical treatment, nursing, hospital service, ambulance service, dental service, burial service, or any or all of the above enumerated services, or any other necessary service, contingent upon sickness, accident or death, are hereby declared to be a trust fund for the purposes for which the same are collected. [1927 c 307 § 1; RRS § 7614-1.]

49.52.020 Lien of party rendering service. In case any employer collecting moneys from his employees for any or all of the purposes specified in RCW 49.52.010, shall enter into a contract or arrangement with any hospital association, corporation, firm or individual, to furnish any such service to its employees, the association, corporation, firm or individual contracting to furnish such services, shall have a lien upon such trust fund prior to all other liens except taxes. The lien hereby created shall attach from the date of the arrangement or contract to furnish such services and may be foreclosed in the manner provided by law for the foreclosure of other liens on personal property. [1927 c 307 § 2; RRS § 7614-2.]

49.52.030 Deductions in extrahazardous employment—Medical aid fund deductions excluded. All moneys realized by any employer from his or its employees either by collection or by deduction from the wages or pay of employees intended or to be used for the furnishing to workmen engaged in extrahazardous work, their families or dependents, of medical, surgical or hospital care and treatment, or for nursing, ambulance service, burial or any or all of the above enumerated services, or any service incidental to or furnished or rendered because of sickness, disease, accident or death, and all moneys owing by any employer therefor, shall be and remain a fund for the purposes for which such moneys are intended to be used, and shall not constitute or become any part of the assets of the employer making such collections or deductions: *Provided, however,* That RCW 49.52.030 and 49.52.040 shall not apply to moneys collected or deducted as aforesaid for, or owing by employers to the state medical aid fund. Such moneys shall be paid over promptly to the physician or surgeon or hospital association or other parties to which such moneys are due and for the purposes for which such collections or deductions were made. [1929 c 136 § 1; RRS § 7713-1.]

49.52.040 Actions to recover for service—Lien—Priority. If any such employer shall default in any such payment to any physician, surgeon, hospital, hospital association or any other parties to whom any such payment is due, the sum so due may be collected by an action at law in the name of the physician, surgeon, hospital, hospital association or any other party to whom such payment is owing, or their assigns and against such defaulting employer, and in addition to such action, such claims shall have the same priority and lien rights as granted to the state for claims due the accident and medical aid funds by section 7682 of Remington's Compiled Statutes of Washington, 1922 [RCW 51.16.150 through 51.16.170], and acts amendatory thereto, which priority and lien rights shall be enforced in the same manner and under the same conditions as provided in said section 7682 [RCW 51.16.150 through 51.16.170]: *Provided, however,* That the said claims for physicians, surgeons, hospitals and hospital associations and others shall be secondary and inferior to any claims of the state and to any claims for labor. Such right of action shall be in addition to any other right of action or remedy. [1929 c 136 § 2; RRS § 7713-2.]

49.52.050 Rebates of wages—False records—Penalty. Any employer or officer, vice principal or agent of any employer, whether said employer be in private business or an elected public official, who

(1) Shall collect or receive from any employee a rebate of any part of wages theretofore paid by such employer to such employee; or

(2) Wilfully and with intent to deprive the employee of any part of his wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract; or

(3) Shall wilfully make or cause another to make any false entry in any employer's books or records purporting to show the payment of more wages to an employee than such employee received; or

(4) Being an employer or a person charged with the duty of keeping any employer's books or records shall wilfully fail or cause another to fail to show openly and clearly in due course in such employer's books and records any rebate of or deduction from any employee's wages; or

(5) Shall wilfully receive or accept from any employee any false receipt for wages;

Shall be guilty of a misdemeanor. [1941 c 72 § 1; 1939 c 195 § 1; Rem. Supp. 1941 § 7612-21.]

Severability—1939 c 195: "If any section, sub-section, sentence or clause of this act shall be adjudged unconstitutional, such adjudication shall not affect the validity of the act as a whole or of any section, sub-section, sentence or clause thereof not adjudged unconstitutional." [1939 c 195 § 5; RRS § 7612-25.] This applies to RCW 49.52.050-49.52.080.

49.52.060 Authorized withholding. The provisions of RCW 49.52.050 shall not make it unlawful for an employer to withhold or divert any portion of an employee's wages when required or empowered so to do by state or federal law or when a deduction has been expressly authorized in writing in advance by the employee for a lawful purpose accruing to the benefit of such employee nor shall the provisions of RCW 49.52.050 make it unlawful for an employer to withhold deductions for medical, surgical, or hospital care or service, pursuant to any rule or regulation: *Provided,* That the employer derives no financial benefit from such deduction and the same is openly, clearly and in due course recorded in the employer's books. [1939 c 195 § 2; RRS § 7612-22.]

Public employment, payroll deductions: RCW 41.04.020, 41.04.030, 41.04.035 and 41.04.036.

Penalty for coercion as to purchase of goods, meals, etc.: RCW 49.48.020.

Wages to be paid in lawful money or negotiable order, penalty: RCW 49.48.010.

49.52.070 Civil liability for double damages. Any employer and any officer, vice principal or agent of any employer who shall violate any of the provisions of subdivisions (1) and (2) of RCW 49.52.050 shall be liable in a civil action by the aggrieved employee or his assignee to judgment for twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney's fees: *Provided, however,* That the benefits of this section shall not be available to any employee who has knowingly submitted to such violations. [1939 c 195 § 3; RRS § 7612-23.]

49.52.080 Presumption as to intent. The violations by an employer or any officer, vice principal, or agent of any employer of any of the provisions of subdivisions (3), (4), and (5) of RCW 49.52.050 shall raise a presumption that any deduction from or underpayment of any employee's wages connected with such violation was wilful. [1939 c 195 § 4; RRS § 7612-24.]

49.52.090 Rebates of wages on public works—Penalty. Every person, whether as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes or receives, or conspires with another to take or receive, for his own use or the use of any other person acting with him any part or portion of the wages paid to any laborer, workman or mechanic, including a piece worker and working subcontractor, in connection with services rendered upon any public work within this state, whether such work is done directly for the state, or public body or officer thereof, or county, city and county, city, town, township, district or other political subdivision of the said state or for any contractor or subcontractor engaged in such public work for such an awarding or public body or officer, shall be guilty of a gross misdemeanor. [1935 c 29 § 1; RRS § 10320-1.]

Prevailing wages must be paid on public works: RCW 39.12.020.

Chapter 49.56

WAGES—PRIORITIES—PREFERENCES

Sections

- 49.56.010 Priority of wages in insolvency.
- 49.56.020 Preference on death of employer.
- 49.56.030 Priority in executions, attachments, etc.
- 49.56.040 Labor claims paramount to claims by state agencies.

Chattel liens: Chapter 60.08 RCW.

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

49.56.010 Priority of wages in insolvency. In all assignments of property made by any person to trustees or assignees on account of the inability of the person at the time of the assignment to pay his debts, or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks or laborers employed by such persons to the amount of one hundred dollars, each, and for services rendered within sixty days previously, are preferred claims, and must be paid by such trustees or assignees before any other creditor or creditors of the assignor. [Code 1881 § 1972; 1877 p 223 § 34; RRS § 1204.]

Construction—1877 p 224: "In construing the provisions of this act, words used in the masculine gender include the feminine and neuter, the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person, and the word writing includes printing." [1877 p 224 § 37.]

Construction—1877 p 224: "This act establishes the law of this territory respecting the subject to which it relates and its provisions and all proceedings under it are to be liberally construed with a view to effect its object." [1877 p 224 § 39.]

Repeal and saving—1877 p 224: "All acts relating to any kind or class of liens provided for in this act are hereby repealed, but no action or proceeding commenced before this act takes effect, and no right accrued is affected by such repeal but the proceedings therein must conform to the requirements of this act as far as applicable." [1877 p 224 § 38.]

Effective date—1877 p 224: "This act shall take effect and be in force from and after its passage and the approval thereof by the governor." (Approved, November 8th, 1877.) [1877 p 224 § 40.]

49.56.020 Preference on death of employer. In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant and laborer for services rendered within sixty days next preceding the death of the employer, not exceeding one hundred dollars, rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate and the allowance to the widow and infant children, and must be paid before other claims against the estate of the deceased person. [Code 1881 § 1973; 1877 p 223 § 35; RRS § 1205.]

49.56.030 Priority in executions, attachments, etc. In cases of executions, attachments and writs of similar nature issued against any person, except for claims for labor done, any miners, mechanics, salesmen, servants, clerks and laborers who have claims against the defendant for labor done, may give notice of their claims and the amount thereof, sworn to by the person making the claim to the creditor and the officer executing either of such writs at any time before the actual sale of property levied on, and unless such claim is disputed by the debtor or a creditor, such officer must pay to such person out of the proceeds of the sale, the amount each is entitled to receive for services rendered within sixty days next preceding the levy of the writ, not exceeding one hundred dollars. If any or all the claims so presented and claiming preference under this chapter, are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten days from the recovery thereof, and must prosecute his action with due diligence, or be forever barred from any claim of priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim, until the determination of such action; and in case judgment be had for the claim or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim with the same rank as the original claim. [Code 1881 § 1974; 1877 p 223 § 36; RRS § 1206.]

49.56.040 Labor claims paramount to claims by state agencies. In distraint or insolvency proceedings affecting the assets of an employer, claims for labor, salaries or wages not to exceed six hundred dollars to each claimant which have been earned within three months before the date of the distraint or commencement of the proceeding shall be paramount and superior to any claim preferred or presented by an agency of the state: *Provided*, That this section shall not apply to any compensation payable to an employer or to an officer, director, or stockholder of a corporate employer. [1967 ex.s. c 86 § 1.]

Chapter 49.60

LAW AGAINST DISCRIMINATION

Sections

- 49.60.010 Purpose of chapter.
- 49.60.020 Construction of chapter—Election of other remedies.
- 49.60.030 Freedom from discrimination—Declaration of civil rights.
- 49.60.040 Definitions.

- 49.60.050 Board created.
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- 49.60.320 Governor may act on orders against state or political subdivisions.

Application forms—Licenses—Mention of race or religion prohibited: RCW 43.01.100, 43.01.110.

Blind persons with guide dog not to be refused service: RCW 70.84.030.

Denial of civil rights: RCW 9.91.010.

Sex equality: State Constitution Art. 31 §§ 1, 2 (Amendment 61).

Unfit buildings, discrimination prohibited: RCW 35.80.040.

49.60.010 Purpose of chapter. This chapter shall be known as the "law against discrimination". It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical handicap are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state

agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical handicap; and the board established hereunder is hereby given general jurisdiction and power for such purposes. [1973 1st ex.s. c 214 § 1; 1973 c 141 § 1; 1969 ex.s. c 167 § 1; 1957 c 37 § 1; 1949 c 183 § 1; Rem. Supp. 1949 § 7614–20.]

Severability—1969 ex.s. c 167: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 167 § 10.]

Severability—1957 c 37: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1957 c 37 § 27.] This applies to RCW 49.60.010–49.60.050, 49.60.090, 49.60.120 and 49.60.180–49.60.310.

Severability—1949 c 183: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1949 c 183 § 13.] This applies to RCW 49.60.060–49.60.080, 49.60.100–49.60.110, 49.60.130–49.60.170 and 49.60.320.

Urban renewal law—Discrimination prohibited: RCW 35.81.170.

49.60.020 Construction of chapter—Election of other remedies. The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, color, creed, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical handicap, other than a law which purports to require or permit doing any act which is an unfair practice under this chapter. Nor shall anything herein contained be construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his civil rights. [1973 1st ex.s. c 214 § 2; 1973 c 141 § 2; 1957 c 37 § 2; 1949 c 183 § 12; Rem. Supp. 1949 § 7614–30.]

49.60.030 Freedom from discrimination—Declaration of civil rights. (1) The right to be free from discrimination because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions without discrimination: *Provided however*, That different insurance rates may be continued and/or applied on the basis of sex when bona fide statistical differences in risk or exposure are substantiated.

(2) Any person deeming himself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, to recover the actual damages sustained by him, or both, together with the cost of suit including a reasonable attorney's fees or any other remedy authorized by this chapter or the United States Civil Rights Act of 1964; and

(3) Notwithstanding any other provisions of this chapter, any act prohibited by this chapter related to sex discrimination which is committed in the course of trade or commerce in the state of Washington as defined in the Consumer Protection Act, chapter 19.86 RCW, shall be deemed an unfair practice within the meaning of RCW 19.86.020 and subject to all the provisions of chapter 19.86 RCW as now or hereafter amended. [1974 1st ex.s. c 32 § 1; 1973 1st ex.s. c 214 § 3; 1973 c 141 § 3; 1969 ex.s. c 167 § 2; 1957 c 37 § 3; 1949 c 183 § 2; Rem. Supp. 1949 § 7614-21.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

49.60.040 Definitions. As used in this chapter:

"Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof;

"Employer" includes any person acting in the interest of an employer, directly, or indirectly, who has eight or more persons in his employ, and does not include any religious or sectarian organization, not organized for private profit;

"Employee" does not include any individual employed by his parents, spouse or child, or in the domestic service of any person;

"Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment;

"Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

"National origin" includes "ancestry";

"Full enjoyment of" includes the right to purchase any service, commodity or article of personal property

offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed or color, to be treated as not welcome, accepted, desired or solicited;

"Any place of public resort, accommodation, assemblage or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: *Provided*, That nothing herein contained shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything herein contained apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution;

"Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

"Real estate transaction" includes the sale, exchange, purchase, rental or lease of real property.

"Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the course of the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be

deferred. [1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Construction—1961 c 103: "Nothing herein shall be construed to render any person or corporation liable for breach of preexisting contracts by reason of compliance by such person or corporation with this act." [1961 c 103 § 4.] This applies to the 1961 amendments to RCW 49.60.040, 68.20.110 and 84.36.020.

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

49.60.050 Board created. There is created the "Washington state board against discrimination," which shall be composed of five members to be appointed by the governor, one of whom shall be designated as chairman by the governor. [1957 c 37 § 5; 1955 c 270 § 2. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

49.60.051 Board name changed to Washington State Human Rights Commission. From and after August 9, 1971 the "Washington State Board Against Discrimination" shall be known and designated as the "Washington State Human Rights Commission". [1971 ex.s. c 52 § 2.]

49.60.060 Membership of board. One of the original members of the board shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds.

A member shall be eligible for reappointment.

A vacancy in the board shall be filled within thirty days, the remaining members to exercise all powers of the board.

Any member of the board may be removed by the governor for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon. [1955 c 270 § 3. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

49.60.070 Compensation of board members. Each member of the board while in session or on official business shall receive twenty dollars per day in lieu of subsistence and shall receive reimbursement for actual and necessary traveling expenses incurred during such time. Such reimbursement shall be made in the manner provided by law for similar reimbursements for state employees. [1955 c 270 § 4. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

49.60.080 Official seal. The board shall adopt an official seal, which shall be judicially noticed. [1955 c 270 § 5. Prior: (i) 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part. (ii) 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.090 Offices of the board. The principal office of the board shall be in the city of Olympia, but it may meet and exercise any or all of its powers at any other place in the state, and may establish such district offices as it deems necessary. [1957 c 37 § 6; 1955 c 270 § 6. Prior: (i) 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part. (ii) 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.100 Reports of board. The board, at the close of each calendar year, shall report to the governor, describing in detail the investigations, proceedings, and hearings it has conducted and their outcome, the decisions it has rendered, the recommendations it has issued, and the other work performed by it, and shall make such recommendations for further legislation as may appear desirable. The board shall present its reports to each regular session of the legislature; the board's reports shall be published and made available upon request. [1955 c 270 § 7. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

49.60.110 Board to formulate policies. The board shall formulate policies to effectuate the purposes of this chapter and may make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes. [1949 c 183 § 5; Rem. Supp. 1949 § 7614-24.]

49.60.120 Certain powers and duties of board. The board shall have the functions, powers and duties:

(1) To appoint an executive secretary and chief examiner, and such investigators, examiners, clerks, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(2) To obtain upon request and utilize the services of all governmental departments and agencies.

(3) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this chapter, and the policies and practices of the board in connection therewith.

(4) To receive, investigate, and pass upon complaints alleging unfair practices as defined in this chapter because of sex, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap.

(5) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of sex, race, creed, color, national origin, marital status, age, or the presence of any sensory, mental, or physical handicap.

(6) To make such technical studies as are appropriate to effectuate the purposes and policies of this chapter and to publish and distribute the reports of such studies. [1973 1st ex.s. c 214 § 4; 1973 c 141 § 7; 1971 ex.s. c 81 § 1; 1957 c 37 § 7; 1955 c 270 § 8. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

Effective date—1971 ex.s. c 81: "The effective date of this act shall be July 1, 1971." [1971 ex.s. c 81 § 6.] "this act" consists of RCW 49.60.120, 49.60.130, 49.60.180, 49.60.190, and 49.60.200.

49.60.130 May create advisory agencies and conciliation councils. The board has power to create such advisory agencies and conciliation councils, local, regional, or state-wide, as in its judgment will aid in effectuating the purposes of this chapter. The board may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of sex, race, creed, color, national origin, marital status, or the presence of any sensory, mental, or physical handicap; to foster through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population of the state, and to make recommendations to the board for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education which the board may recommend to the appropriate state agency.

Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary traveling expenses, and the board may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance. The board may use organizations specifically experienced in dealing with questions of discrimination. [1973 1st ex.s. c 214 § 5; 1973 c 141 § 8; 1971 ex.s. c 81 § 2; 1955 c 270 § 9. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

49.60.140 Board may hold hearings and subpoena witnesses. The board has power to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the board. The board may make rules as to the issuance of subpoenas by individual members, as to service of complaints, decisions, orders, recommendations and other process or papers of the board, its member, agent, or agency, either personally or by registered mail, return receipt requested, or by leaving a copy thereof at the principal office or place of business of the person required to be served. The return post office receipt, when service is by registered mail, shall be proof of service of the same. [1955 c 270 § 10. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.150 Witnesses compelled to testify. No person shall be excused from attending and testifying or from producing records, correspondence, documents or other evidence in obedience to the subpoena of the board or of any individual member, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination,

to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons so compelled to testify. [1955 c 270 § 11. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.160 Refusals may be punished as contempt of court. In case of contumacy or refusal to obey a subpoena issued to any person, the superior court of any county within the jurisdiction of which the investigation, proceeding, or hearing is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the board shall have jurisdiction to issue to such person an order requiring such person to appear before the board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. [1955 c 270 § 12. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.170 Witness fees—Deposition fees. Witnesses before the board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of this state. Witnesses whose depositions are taken and the person taking the same shall be entitled to same fees as are paid for like services in the courts of the state. [1955 c 270 § 13. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

Courts of record—Witnesses: Chapter 2.40 RCW.

Discovery and depositions: Title 5 RCW; see also Rules of Court, CR 26-37.

49.60.175 Unfair practices of financial institutions. It shall be an unfair practice to use or require designation of the sex, race, creed, color or national origin of any person on any document concerning an application for credit in any credit transaction. [1973 c 141 § 9; 1959 c 68 § 1.]

49.60.176 Unfair practices with respect to credit transactions. (1) It is an unfair practice for any person whether acting for himself or another in connection with any credit transaction because of race, creed, color, national origin, sex or marital status:

- (a) To deny credit to any person;
- (b) To increase the charges or fees for or collateral required to secure any credit extended to any person;
- (c) To restrict the amount or use of credit extended or to impose different terms or conditions with respect to the credit extended to any person or any item or service related thereto;
- (d) To attempt to do any of the unfair practices defined in this section.

(2) Nothing in this section shall prohibit any party to a credit transaction from considering the credit history of any individual applicant.

(3) Further, nothing in this section shall prohibit any party to a credit transaction from considering the application of the community property law to the individual case or from taking reasonable action thereon. [1973 c 141 § 5.]

49.60.178 Unfair practices with respect to insurance transactions. It is an unfair practice for any person whether acting for himself or another in connection with an insurance transaction to fail or refuse to issue or renew insurance to any person because of sex, marital status, race, creed, color or national origin. For the purposes of this section, "insurance transaction" is defined in RCW 48.01.060.

The fact that such unfair practice may also be a violation of chapter 48.30 RCW does not constitute a defense to an action brought under this section. [1974 1st ex.s. c 32 § 2; 1973 c 141 § 6.]

Cancellation or failure to renew insurance based upon sex or marital status deemed unfair practice: RCW 48.30.280, 48.30.290.

49.60.180 Unfair practices of employer defined. It is an unfair practice for any employer:

(1) To refuse to hire any person because of such person's age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification: *Provided*, That the prohibition against discrimination because of such handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved.

(2) To discharge or bar any person from employment because of such person's age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of such person's age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap: *Provided*, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the board by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: *Provided*, Nothing contained herein shall prohibit advertising in a foreign language. [1973 1st ex.s. c 214 § 6; 1973 c 141 § 10; 1971 ex.s. c 81 § 3; 1961 c 100 § 1; 1957 c 37 § 9. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Labor prohibited practices: Chapter 49.44 RCW.

Unfair practices in employment because of age of employee or applicant: RCW 49.44.090.

49.60.190 Unfair practices of labor unions defined. It is an unfair practice for any labor union or labor organization:

(1) To deny membership and full membership rights and privileges to any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap.

(2) To expel from membership any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap.

(3) To discriminate against any member, employer, or employee because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap. [1973 1st ex.s. c 214 § 8; 1973 c 141 § 11; 1971 ex.s. c 81 § 4; 1961 c 100 § 2; 1957 c 37 § 10. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

49.60.200 Unfair practices of employment agencies.

It is an unfair practice for any employment agency to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, an individual because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap, or to print or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination as to age, sex, race, creed, color, or national origin, or the presence of any sensory, mental, or physical handicap, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: *Provided*, Nothing contained herein shall prohibit advertising in a foreign language. [1973 1st ex.s. c 214 § 9; 1973 c 141 § 12; 1971 ex.s. c 81 § 5; 1961 c 100 § 3; 1957 c 37 § 11. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Employment agencies not to disclose religious affiliations: RCW 28A.02.050.

Fraud by employment agent: RCW 49.44.050.

49.60.210 Unfair to discriminate against person opposing unfair practice. It is an unfair practice for any employer, employment agency, or labor union to discharge, expel, or otherwise discriminate against any

person because he has opposed any practices forbidden by this chapter, or because he has filed a charge, testified, or assisted in any proceeding under this chapter. [1957 c 37 § 12. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

49.60.215 Unfair practices of places of public resort, accommodation, assemblage, amusement. It shall be an unfair practice for any person or his agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, or national origin. [1957 c 37 § 14.]

Denial of civil rights: RCW 9.91.010.

49.60.220 Unfair practice to aid violation. It is an unfair practice for any person to aid, abet, encourage, or incite the commission of any unfair practice, or to attempt to obstruct or prevent any other person from complying with the provisions of this chapter or any order issued thereunder. [1957 c 37 § 13. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

49.60.222 Unfair practices with respect to real estate transactions, facilities or services. It is an unfair practice for any person, whether acting for himself or another, because of sex, marital status, race, creed, color or national origin:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his attention, or to refuse to permit him to inspect real property;
- (6) To print, circulate, post or mail or cause to be so published a statement, advertisement or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;
- (7) To offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or

in the furnishing of facilities or services in connection therewith;

(8) To expel a person from occupancy of real property; or

(9) To discriminate in the course of negotiating, executing of [or] financing a real estate transaction whether by mortgage, deed of trust, contract or other instrument imposing a lien or other security in real property or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions.

(10) To attempt to do any of the unfair practices defined in this section. [1973 c 141 § 13; 1969 ex.s. c 167 § 4.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.223 Unfair practice to induce sale or rental of real property by representations regarding entry into neighborhood of persons of particular race, etc. It is an unfair practice for any person, for profit, to induce or attempt to induce any person to sell or rent any real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color or national origin. [1969 ex.s. c 167 § 5.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.224 Provisions of real property contract restricting conveyance, encumbrance, occupancy or use to persons of particular race, creed, color, etc., void—Unfair practice. (1) Every provision in a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy or lease thereof to individuals of a specified race, creed, color or national origin, and every condition, restriction or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, or national origin, is void.

(2) It is an unfair practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title. [1969 ex.s. c 167 § 6.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.225 Award to complainant for loss of rights secured. When a determination has been made under RCW 49.60.250 that an unfair practice involving real property has been committed, the board or its successor may, in addition to other relief authorized by RCW 49.60.250, award the complainant up to one thousand dollars for loss of the right secured by RCW 49.60.010, 49.60.030, 49.60.040 and 49.60.222 through 49.60.226 as

now or hereafter amended to be free from discrimination in real property transactions because of sex, marital status, race, creed, color or national origin. Enforcement of the order and appeal therefrom by the complainant or respondent shall be made as provided in RCW 49.60.260 and 49.60.270. [1973 c 141 § 14; 1969 ex.s. c 167 § 7.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.226 Cooperative agreements between units of government for processing complaints. The board against discrimination or its successor and units of local government administering ordinances with provisions similar to the real estate provisions of the law against discrimination are authorized and directed to enter into cooperative agreements or arrangements for receiving and processing complaints so that duplication of functions shall be minimized and multiple hearings avoided. No complainant may secure relief from more than one instrumentality of state, or local government, nor shall any relief be granted by any state or local instrumentality if relief has been granted or proceedings are continuing in any federal agency, court, or instrumentality, unless such proceedings have been deferred pending state action. [1969 ex.s. c 167 § 8.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.230 Complaint may be filed with board. Who may file a complaint:

(1) Any person claiming to be aggrieved by an alleged unfair practice may, by himself or his attorney, make, sign, and file with the board a complaint in writing under oath. The complaint shall state the name and address of the person alleged to have committed the unfair practice and the particulars thereof, and contain such other information as may be required by the board.

(2) Whenever it has reason to believe that any person has been engaged or is engaging in an unfair practice, the board may issue a complaint.

(3) Any employer or principal whose employees, or agents, or any of them, refuse or threaten to refuse to comply with the provisions of this chapter may file with the board a written complaint under oath asking for assistance by conciliation or other remedial action.

Any complaint filed pursuant to this section must be so filed within six months after the alleged act of discrimination. [1957 c 37 § 16; 1955 c 270 § 15. Prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

49.60.240 Complaint investigated—Conference, conciliation—Agreement, findings. After the filing of any complaint, the chairman of the board shall refer it to the appropriate section of the board's staff for prompt investigation and ascertainment of the facts. The results of the investigation shall be reduced to written findings of fact, and a finding shall be made that there is or that there is not reasonable cause for believing that an unfair practice has been or is being committed. A copy of said findings shall be furnished to

the complainant and to the person named in such complaint, hereinafter referred to as the respondent.

If the finding is made that there is reasonable cause for believing that an unfair practice has been or is being committed, the board's staff shall immediately endeavor to eliminate the unfair practice by conference, conciliation and persuasion.

If an agreement is reached for the elimination of such unfair practice as a result of such conference, conciliation and persuasion, the agreement shall be reduced to writing and signed by the respondent, and an order shall be entered by the board setting forth the terms of said agreement. No order shall be entered by the board at this stage of the proceedings except upon such written agreement.

If no such agreement can be reached, a finding to that effect shall be made and reduced to writing, with a copy thereof furnished to the complainant and the respondent. [1957 c 37 § 17; 1955 c 270 § 16. Prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

49.60.250 Hearing of complaint by tribunal—Order. In case of failure to reach an agreement for the elimination of such unfair practice, and upon the entry of findings to that effect, the entire file, including the complaint and any and all findings made, shall be certified to the chairman of the board. The chairman of the board shall thereupon appoint a hearing tribunal of three persons, who shall be members of the board or a panel of hearing examiners acting in the name of the board, to hear the complaint and shall cause to be issued and served in the name of the board a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of the complaint at a hearing before such tribunal, at a time and place to be specified in such notice.

The place of any such hearing may be the office of the board or another place designated by it. The case in support of the complaint shall be presented at the hearing by counsel for the board: *Provided*, That the complainant may retain independent counsel and submit testimony and be fully heard. No member or employee of the board who previously made the investigation or caused the notice to be issued shall participate in the hearing except as a witness, nor shall he participate in the deliberations of the tribunal in such case. Any endeavors or negotiations for conciliation shall not be received in evidence.

The respondent may file a written answer to the complaint and appear at the hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard.

The tribunal conducting any hearing may permit reasonable amendment to any complaint or answer. Testimony taken at the hearing shall be under oath and recorded.

If, upon all the evidence, the tribunal finds that the respondent has engaged in any unfair practice it shall state its findings of fact and shall issue and file with the board and cause to be served on such respondent an order requiring such respondent to cease and desist

from such unfair practice and to take such affirmative action, including, (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, an admission or restoration to full membership rights in any respondent organization, or to take such other action as, in the judgment of the tribunal, will effectuate the purposes of this chapter, and including a requirement for report of the matter on compliance.

If, upon all the evidence, the tribunal finds that the respondent has not engaged in any alleged unfair practice, it shall state its findings of fact and shall similarly issue and file an order dismissing the complaint.

The board shall establish rules of practice to govern, expedite and effectuate the foregoing procedure. [1957 c 37 § 18; 1955 c 270 § 17. Prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

49.60.255 Reconsideration. If the complainant is dissatisfied with the agreement reached as provided in RCW 49.60.240, or if the finding is made as provided for in this chapter, that there is no reasonable cause for believing that an unfair practice has been or is being committed, the complainant may within thirty days of approval by the board of such agreement or from receipt of a copy of said finding file a petition for reconsideration by the board and he shall have the right to appear before the board at its next regular meeting in person or by counsel and present such facts, evidence and affidavits of witnesses as may support the complaint.

The board shall establish rules of practice to govern, expedite, and effectuate the foregoing procedure. [1957 c 37 § 19.]

49.60.260 Court may enforce orders of tribunal—Appeal from court order. (1) The board shall petition the court within the county wherein any unfair practice occurred or wherein any person charged with an unfair practice resides or transacts business, for the enforcement of any order which is not complied with and is issued by a tribunal under the provisions of this chapter and for appropriate temporary relief or a restraining order, and shall certify and file in court a transcript of the entire record of the proceedings, including the pleadings and testimony upon which such order was made and the finding and orders of the hearing tribunal. Within five days after filing such petition in court the board shall cause a notice of the petition to be sent by registered mail to all parties or their representatives.

The court shall have jurisdiction of the proceedings and of the questions determined thereon, and shall have the power to issue such orders and grant such relief by injunction or otherwise, including temporary relief, as it deems just and suitable and to make and enter, upon the pleadings, testimony and proceedings set forth in such transcript, a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part any order of the board or hearing tribunal.

(2) The findings of the hearing tribunal as to the facts, if supported by substantial and competent evidence shall be conclusive. The court, upon its own motion or upon motion of either of the parties to the

proceeding, may permit each party to introduce such additional evidence as the court may believe necessary to a proper decision of the cause.

(3) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to a review by the supreme court or the court of appeals, on appeal, by either party, irrespective of the nature of the decree or judgment. Such appeal shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases of appeal to the supreme court or the court of appeals, and the record so certified shall contain all that was before the lower court. [1971 c 81 § 118; 1957 c 37 § 21. Prior: 1949 c 183 § 9, part; Rem Supp. 1949 § 7614-27A, part.]

Rules of court: See rules on appeal.

49.60.270 Appeal from orders of tribunal. Any respondent or complainant aggrieved by a final order of a hearing tribunal may obtain a review of such order in the superior court for the county where the unfair practice is alleged to have occurred or in the county wherein such person resides or transacts business by filing with the clerk of the court, within two weeks from the date of receipt of such order, a written petition in duplicate praying that such order be modified or set aside. The clerk shall thereupon mail the duplicate copy to the board. The board shall then cause to be filed in the court a certified transcript of the entire record in the proceedings, including the pleadings, testimony and order. Upon such filing the court shall proceed in the same manner as in the case of a petition by the board and shall have the same exclusive jurisdiction to grant to any party such temporary relief or restraining order as it deems just and suitable, and in like manner to make and enter a decree enforcing or modifying and enforcing as so modified or setting aside, in whole or in part, the order sought to be reviewed.

Unless otherwise directed by the court, commencement of review proceedings under this section shall operate as a stay of any order. [1957 c 37 § 22. Prior: 1949 c 183 § 9, part; Rem. Supp. 1949 § 7614-27A, part.]

49.60.280 Court shall expeditiously hear and determine. Petitions filed under RCW 49.60.260 and 49.60.270 shall be heard expeditiously and determined upon the transcript filed, without requirement of printing. Hearings in the court under this chapter shall take precedence over all other matters, except matters of the same character. [1957 c 37 § 23. Prior: 1949 c 183 § 9, part; Rem. Supp. 1949 § 7614-27A, part.]

49.60.290 Court may not restrain or enjoin board. No court of this state shall have jurisdiction to issue any restraining order or temporary or permanent injunction preventing the board from performing any function vested in it by this chapter. [1957 c 37 § 24. Prior: 1949 c 183 § 9, part; Rem. Supp. 1949 § 7614-27A, part.]

49.60.310 Misdemeanor to interfere with or resist board. Any person that wilfully resists, prevents, impedes, or interferes with the board or any of its members or representatives in the performance of duty under this chapter, or that wilfully violates an order of the board, is guilty of a misdemeanor; but procedure for the review of the order shall not be deemed to be such wilful conduct. [1961 c 100 § 4; 1957 c 37 § 26; 1949 c 183 § 10; Rem. Supp. 1949 § 7614-28.]

49.60.320 Governor may act on orders against state or political subdivisions. In any case in which the board shall issue an order against any political or civil subdivision of the state, or any agency, or instrumentality of the state or of the foregoing, or any officer or employee thereof, the board shall transmit a copy of such order to the governor of the state who shall take such action as he deems appropriate to secure compliance with such order. [1949 c 183 § 11; Rem. Supp. 1949 § 7614-29.]

**Chapter 49.64
EMPLOYEE BENEFIT PLANS**

Sections

- 49.64.010 Duration of trusts for employee benefits.
- 49.64.020 Trusts exempted from limitation as to duration.
- 49.64.030 Employee benefit plans—Payment, refund, as discharge—Adverse claims.

Employee welfare trust funds: Chapter 48.52 RCW.

49.64.010 Duration of trusts for employee benefits. Any trust heretofore or hereafter created for the purposes and of the type enumerated in RCW 49.64.020, whether in real or personal property or in real and personal property, may continue for such time as may be necessary to accomplish the purposes of the trust and shall not be invalid as violating any statute or rule of law against perpetuities, or against accumulations of earnings, or concerning the suspension of the power of alienation of the title to property, or otherwise limiting the duration of trusts. [1955 c 158 § 1.]

49.64.020 Trusts exempted from limitation as to duration. Trusts which are entitled to the exemption from limitation as to their duration provided for in RCW 49.64.010 must be:

- (1) Created by an employer primarily for the benefit of some or all of the employees of such employer or the families or appointees of such employees, under any pension, profit-sharing, stock bonus, retirement, disability, death benefit or other similar types of employee-benefit plans; and
- (2) Contributed to by the employer or employees or both; and
- (3) Existing for the purpose of distributing to or for the benefit of some or all of such employees (either before or after their employment ceases), their families or appointees, the earnings or principal, or earnings and principal, of the trust. [1955 c 158 § 2.]

49.64.030 Employee benefit plans—Payment, refund, as discharge—Adverse claims. Notwithstanding the provisions of RCW 26.16.030, whenever payment or

refund is made to an employee, former employee, or his beneficiary or estate pursuant to and in full compliance with a written retirement, death or other employee benefit plan or savings plan, such payment or refund shall fully discharge the employer and any trustee or insurance company making such payment or refund from all adverse claims thereto unless, before such payment or refund is made, the employer or former employer, where the payment is made by the employer or former employer, has received at its principal place of business within this state, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or refund or some part thereof, or where a trustee or insurance company is making the payment, such notice has been received by the trustee or insurance company at its home office or its principal place of business within this state, and if none, such notice may be made on the secretary of state: *Provided, however,* That nothing contained in this section shall affect any claim or right to any such payment or refund or part thereof as between all persons other than employer and the trustee or insurance company making such payment or refund. [1953 c 45 § 1. Formerly RCW 49.52.065.]

*Employee welfare trust funds: Chapter 48.52 RCW.
Employees' benefit deductions are trust funds: RCW 49.52.010.*

**Chapter 49.66
HEALTH CARE ACTIVITIES**

Sections

- 49.66.010 Purpose—Policy—Declaration.
- 49.66.020 Definitions.
- 49.66.030 Bargaining units.
- 49.66.040 Unfair labor practices by health care activities.
- 49.66.050 Unfair labor practices by employee organizations or agents.
- 49.66.060 Strikes and picketing.
- 49.66.070 Relief from unfair labor practices—Actions—Remedial orders.
- 49.66.080 Rules and regulations—Procedures.
- 49.66.090 Board of arbitration—Members—Selection—Chairman.
- 49.66.100 Board of arbitration—Hearings—Findings.
- 49.66.110 Board of arbitration—Standards or guidelines.
- 49.66.120 Arbitrators—Compensation—Expenses.
- 49.66.900 Severability—1972 ex.s. c 156.

49.66.010 Purpose—Policy—Declaration. It is the public policy of the state to expedite the settlement of labor disputes arising in connection with health care activities, in order that there may be no lessening, however temporary, in the quality of the care given to patients. It is the legislative purpose by this chapter to promote collective bargaining between health care activities and their employees, to protect the right of employees of health care activities to organize and select collective bargaining units of their own choosing.

It is further determined that any agreements involving union security including an all-union agreement or agency agreement must safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee must pay an amount of money equivalent to regular union

dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which such employee would otherwise pay dues. The employee shall furnish written proof that this has been done. If the employee and representative of the labor organization do not reach agreement on the matter, the department shall designate such organization. [1973 2nd ex.s. c 3 § 1; 1972 ex.s. c 156 § 1.]

49.66.020 Definitions. As used in this chapter:

(1) "Health care activity" includes any hospital, nursing home, institution, agency or establishment, exclusive of those operated by the state, its municipalities, or political subdivisions, having for one of its principal purposes the preservation of health or the care of sick, aged or infirm persons.

(2) "Bargaining unit" includes any group of employees of a health care activity having substantially common interests with respect to working conditions. The composition of a bargaining unit may be determined by common consent between an employer and its employees, or, in the event either party shall apply to the director of labor and industries for a determination of the composition of a bargaining unit, it shall be determined by the director of labor and industries or his delegated representative. No bargaining unit shall be found appropriate if it includes guards together with other employees.

(3) "Employee" includes any registered nurse or licensed practical nurse or service personnel performing services for wages for a health care activity. The term shall not apply to a member of a religious order assigned to a health care activity by the order as a part of his obligations to it; nor shall it apply to persons performing services in connection with healing by prayer or spiritual means alone in accordance with the tenets and practices of recognized church or religious denominations by adherents thereof; nor shall it apply to supervisors.

(4) "Employer" includes any person, agency, corporation, company or other organization engaged in the operation of a health care activity, whether for profitable or charitable purposes.

(5) "Supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Supervisor includes registered nurses only if administrative supervision is his or her primary duty and activity.

(6) "Guard" means any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises.

(7) "Director" means the director of the department of labor and industries.

(8) "Department" means the department of labor and industries. [1973 2nd ex.s. c 3 § 2; 1972 ex.s. c 156 § 2.]

49.66.030 Bargaining units. An employee association shall be deemed the properly designated representative of a bargaining unit when it can show evidence that bargaining rights have been assigned to it by a majority of the employees in the bargaining unit. Should questions arise concerning the representative status of any employee organization claiming to represent a bargaining unit of employees, upon petition by such an organization, it shall be the duty of the director, acting by himself or through a designee to investigate and determine the composition of the organization. Any organization found authorized by not less than thirty percent of the employees of a bargaining unit shall be eligible to apply for an election to determine its rights to represent the unit. If more than one organization shall claim to represent any unit, the director, or his designee, may conduct an election by secret ballot to determine which organization shall be authorized to represent the unit. In order to be certified as a bargaining representative, an employee organization must receive, in a secret ballot election, votes from a majority of the employees who vote in the election, except that nothing in this section shall prohibit the voluntary recognition of a labor organization as a bargaining representative by an employer upon a showing of reasonable proof of majority. In any election held pursuant to this section, there shall be a choice on the ballot for employees to designate that they do not wish to be represented by any bargaining representative. No representation election shall be directed in any bargaining unit or any subdivision thereof within which, in the preceding twelve-month period, a valid election has been held. Thirty percent of the employees of an employer may file a petition for a secret ballot election to ascertain whether the employee organization which has been certified or is currently recognized by their employer as their bargaining representative is no longer their bargaining representative.

No employee organization shall be certified as the representative of employees in a bargaining unit of guards, if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. The determination shall be based upon a plurality of votes cast in such election, and shall remain in effect for a period of not less than one year. In determining appropriate bargaining units, the director shall limit such units to groups consisting of registered nurses, licensed practical nurses or service personnel: *Provided, however,* That if a majority of each such classification desires inclusion within a single bargaining unit, they may combine into a single unit. [1973 2nd ex.s. c 3 § 3; 1972 ex.s. c 156 § 3.]

49.66.040 Unfair labor practices by health care activities. It shall be deemed an unfair labor practice, and unlawful, for any health care activity to:

(1) Interfere with, restrain or coerce employees in any manner in the exercise of their right of self-organization: *Provided*, That the expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit;

(2) Initiate, create, dominate, contribute to or interfere with the formation or administration of any employee organization having bargaining as one of its functions;

(3) Discriminate in regard to hire, terms, or conditions of employment in order to discourage membership in any employee organization having collective bargaining as one of its functions;

(4) Refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of employees; and it shall be a requirement of good faith bargaining that the parties be willing to reduce to writing, and have their representatives sign, any agreement arrived at through negotiation and discussion. [1972 ex.s. c 156 § 4.]

49.66.050 Unfair labor practices by employee organizations or agents. It shall be an unfair labor practice and unlawful, for any employee organization or its agent to:

(1) Restrain or coerce (a) employees in the exercise of their right to refrain from self-organization, or (b) an employer in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances;

(2) Cause or attempt to cause an employer to discriminate against an employee in violation of subsection (3) of RCW 49.66.040 or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) Refuse to meet and bargain in good faith with an employer, provided it is the duly designated representative of the employer's employees for purposes of collective bargaining;

(4) Require of employees covered by a union security agreement the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the director finds excessive or discriminatory under all the circumstances. In making such a finding, the director shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(5) Cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed;

(6) Enter into any contract or agreement, express or implied, whereby an employer or other person ceases or refrains, or agrees to cease or refrain, from handling,

using, selling, transporting or otherwise dealing in any of the products or services of any other employer or person, or to cease doing business with any other employer or person, and any such contract or agreement shall be unenforceable and void; or

(7) Engage in, or induce or encourage any individual employed by any employer or to engage in, an activity prohibited by RCW 49.66.060. [1973 2nd ex.s. c 3 § 4; 1972 ex.s. c 156 § 5.]

49.66.060 Strikes and picketing. No employee organization, bargaining representative, person or employee shall authorize, sanction, engage in, or participate in a strike (including but not limited to a concerted work stoppage of any kind, concerted slowdown or concerted refusal or failure to report for work or perform work) or picketing against an employer under any circumstances, whether arising out of a recognition dispute, bargaining impasse or otherwise: *Provided*, That nothing in this section shall prohibit picketing or other publicity for the sole purpose of truthfully advising the public of the existence of a dispute with the employer, unless an effect of such picketing or other publicity is (a) to induce any employee of the employer or any other individual, in the course of his employment, not to pick up, deliver or transfer goods, not to enter the employer's premises, or not to perform services; or (b) to induce such an employee or individual to engage in a strike. [1972 ex.s. c 156 § 6.]

49.66.070 Relief from unfair labor practices—Actions—Remedial orders. The director or any employee organization qualified to apply for an election under RCW 49.66.030 as now or hereafter amended or any employer may maintain in its name or in the name of its members legal action in any county in which jurisdiction of the employer or employee organization may be obtained, to seek relief from the commission of an unfair labor practice: *Provided*, That such employer or employee organization exhausts the administrative remedies under rules and regulations promulgated by the department prior to seeking such court action.

The department is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders. Any party aggrieved by any remedial order is entitled to the judicial review thereof in accordance with the provisions of chapter 34.04 RCW. [1973 2nd ex.s. c 3 § 5; 1972 ex.s. c 156 § 7.]

49.66.080 Rules and regulations—Procedures. The director shall have the power to make such rules and regulations not inconsistent with this chapter, including the establishment of procedures for the hearing and determination of charges alleging unfair labor practices, and for a determination on application by either party when an impasse has arisen, and as he shall determine are necessary to effectuate its purpose and to enable him to carry out its provisions. [1973 2nd ex.s. c 3 § 6; 1972 ex.s. c 156 § 8.]

49.66.090 Board of arbitration—Members—Selection—Chairman. In the event that a health care activity and an employees' bargaining unit shall reach an impasse, the matters in dispute shall be submitted to a board of arbitration composed of three arbitrators for final and binding resolution. The board shall be selected in the following manner: Within ten days, the employer shall appoint one arbitrator and the employees shall appoint one arbitrator. The two arbitrators so selected and named shall within ten days agree upon and select the name of a third arbitrator who shall act as chairman. If, upon the expiration of the period allowed therefor the arbitrators are unable to agree on the selection of a third arbitrator, such arbitrator shall be appointed at the request of either party in accordance with the provisions of RCW 7.04.050 and he shall act as chairman of the arbitration board. [1973 2nd ex.s. c 3 § 7; 1972 ex.s. c 156 § 9.]

49.66.100 Board of arbitration—Hearings—Findings. The arbitration board, acting through its chairman, shall call a hearing to be held within ten days after the date of the appointment of the chairman. The board shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings shall be taken. Any oral or documentary evidence and other data deemed relevant by the board may be received in evidence. The board shall have the power to administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements and documents as may be deemed by the board material to a just determination of the issues in dispute and to issue subpoenas. If any person refuses to obey such subpoena or refuses to be sworn to testify, or any witness, party or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the board may invoke the jurisdiction of any superior court and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof. The hearing conducted by the arbitrators shall be concluded within twenty days of the time of commencement and, within ten days after conclusion of the hearings, the arbitrator shall make written findings and a written opinion upon the issues presented, a copy of which shall be mailed or otherwise delivered to the employees' negotiating agent or its attorney or other designated representative and to the employer or the employer's attorney or designated representative. The determination of the dispute made by the board shall be final and binding upon both parties. [1972 ex.s. c 156 § 10.]

49.66.110 Board of arbitration—Standards or guidelines. In making its determination, the board of arbitrators shall be mindful of the legislative purpose

enumerated in RCW 49.66.010 and as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

(1) Wage rates or other conditions of employment of the health care activity in question as compared with prevailing wage rates or other conditions of employment in the local operating area involved.

(2) Wage rates or other working conditions as compared with wage rates or other working conditions maintained for the same or similar work of workers in the local area.

(3) The overall compensation of employees having regard not only to wages for time actually worked but also for time not actually worked, including vacations, holidays and other excused time and for all fringe benefits received.

(4) Interest and welfare of the public.

(5) Comparison of peculiarities of employment in regard to other comparable trades or professions, specifically:

(a) Physical qualifications.

(b) Educational qualifications.

(c) Job training and skills.

(6) Efficiency of operation of the health care activity. [1972 ex.s. c 156 § 11.]

49.66.120 Arbitrators—Compensation—Expenses. The arbitrator so selected by the parties shall be paid at the daily rate or rates not to exceed the usual or customary rates paid to arbitrators in addition to travel expenses and subsistence at the rates by law provided for state employees generally. Such sums together with all expenses of the hearing shall be borne equally by the parties to the arbitration proceedings. [1973 2nd ex.s. c 3 § 8; 1972 ex.s. c 156 § 12.]

49.66.900 Severability—1972 ex.s. c 156. If any portion of this chapter, or its application to any particular health care activity or class of health care activity, should be held invalid, the remainder of the chapter, or its application to other health care activities, or other classes thereof, shall not be affected. [1972 ex.s. c 156 § 13.]

TITLE 50

UNEMPLOYMENT COMPENSATION

Chapters

- 50.01** General provisions.
- 50.04** Definitions.
- 50.08** Establishment of department.
- 50.12** Administration.
- 50.16** Funds.
- 50.20** Benefits and claims.
- 50.22** Extended benefits.
- 50.24** Contributions by employers.
- 50.29** Employer experience rating.
- 50.32** Review, hearings and appeals.
- 50.36** Penalties.
- 50.40** Miscellaneous provisions.
- 50.44** Special coverage provisions.
- 50.98** Construction.

Bringing in out of state persons to replace employees involved in labor dispute: RCW 49.44.100, 49.44.110.

Industrial insurance: Title 51 RCW.

Unfair practices of employment agencies: RCW 49.60.200.

Youth development and conservation committee, department's representative as member: RCW 43.51.520.

Chapter 50.01 GENERAL PROVISIONS

Sections

- 50.01.005 Short title.
- 50.01.010 Preamble.

50.01.005 Short title. This title shall be known and may be cited as the "Employment Security Act." [1953 ex.s. c 8 § 24; 1945 c 35 § 1; Rem. Supp. 1945 § 9998-140.]

50.01.010 Preamble. Whereas, economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state; involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. Social security requires protection against this greatest hazard of our economic life. This can be provided only by application of the insurance principle of sharing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing powers and limiting the serious social consequences of relief assistance. The state of Washington, therefore, exercising herein its police and sovereign power endeavors by

this title to remedy any widespread unemployment situation which may occur and to set up safeguards to prevent its recurrence in the years to come. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, and that this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum. [1945 c 35 § 2; Rem. Supp. 1945 § 9998-141. Prior: 1937 c 162 § 2.]

Chapter 50.04 DEFINITIONS

Sections

- 50.04.020 Base year.
- 50.04.030 Benefit year.
- 50.04.040 Benefits.
- 50.04.050 Calendar quarter.
- 50.04.060 Commissioner.
- 50.04.070 Contributions.
- 50.04.072 Contributions—"Contributions" and "payments in lieu of contributions" as money payments and taxes due state.
- 50.04.073 Contributions—As including "payments in lieu of contributions"—Scope.
- 50.04.080 Employer.
- 50.04.090 Employing unit.
- 50.04.100 Employment.
- 50.04.110 Employment—Situs of services.
- 50.04.115 Employment—Out of state service, election.
- 50.04.116 Employment—Out of state service, when included—"American employer" defined.
- 50.04.120 Employment—Localized service.
- 50.04.140 Employment—Exception tests.
- 50.04.150 Employment—Agricultural labor.
- 50.04.160 Employment—Domestic service.
- 50.04.170 Employment—Maritime service.
- 50.04.180 Family employment.
- 50.04.200 Employment—Local governmental services—Time limitation.
- 50.04.210 Employment—Foreign governmental services.
- 50.04.220 Employment—Services covered by federal act.
- 50.04.230 Employment—Services of insurance agents and solicitors, real estate brokers and real estate salesmen, and investment company agents and solicitors.
- 50.04.235 Employment—Outside salesmen paid by commission.
- 50.04.240 Employment—Newsboys' services.
- 50.04.250 Employment—Services regarding mushrooms.
- 50.04.260 Employment—Specially excepted services.
- 50.04.270 Employment—Casual labor.
- 50.04.280 Employment—"Pay period" determination.
- 50.04.290 Employment office.
- 50.04.295 Payments in lieu of contributions.

- 50.04.300 State.
 50.04.310 Unemployed individual.
 50.04.320 Wages, remuneration.
 50.04.323 Wages, remuneration—Government or private retirement pension plan payments—Effect upon eligibility—Reduction in benefits—Exceptions.
 50.04.330 Wages, remuneration—Retirement and disability payments excepted.
 50.04.340 Wages, remuneration—Death benefits excepted.
 50.04.350 Wages, remuneration—Excepted payments.
 50.04.355 Wages, remuneration—Average annual wage—Average weekly wage—Qualifying annual wage—Qualifying weekly wage.
 50.04.360 Week.

"Application for initial determination" defined: RCW 50.20.140.

"Claim for benefits" defined: RCW 50.20.140.

"Claim for waiting period" defined: RCW 50.20.140.

50.04.020 Base year. "Base year" with respect to each individual, shall mean the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year. [1970 ex.s. c 2 § 1; 1945 c 35 § 3; Rem. Supp. 1945 § 9998–142. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Effective date—1970 ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 5, 1970: *Provided*, That sections 3 and 8 of this 1970 amendatory act shall not take effect until January 1, 1971." [1970 1st ex.s. c 2 § 25.] This act is codified in RCW 50.04.020, 50.04.030, 50.04.320, 50.20.010, 50.20.120, 50.04.355, 50.20.150, 50.24.010, 50.29.010 through 50.29.080 and 50.29.140, 50.04.323, 50.20.030, 50.20.050, 50.20.060 and 50.20.127; sections 3 and 8 are codified in RCW 50.04.320 and 50.24.010.

50.04.030 Benefit year. "Benefit year" with respect to each individual, means the fifty-two consecutive week period beginning with the first day of the calendar week with respect to which the individual files an application for an initial determination and thereafter the fifty-two consecutive week period beginning with the first day of the calendar week with respect to which the individual next files an application for an initial determination after the expiration of his last preceding benefit year: *Provided, however*, That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits.

An individual's benefit year shall be extended to be fifty-three weeks when at the expiration of fifty-two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" during his base year of not less than the "qualifying annual wage" computed for the calendar year preceding the last June 30th immediately preceding his benefit year and either had "employment" in not less than sixteen weeks of his base year in each of which he earned the "qualifying weekly wage" computed for the second calendar year preceding the calendar year in which each such week ends or had "employment" in

not less than six hundred hours of his base year: *Provided, however*, That a benefit year cannot be established if the base year wages include wages earned prior to the establishment of a prior benefit year unless the individual earned wages in "employment" during the last two quarters of the new base year of not less than six times the weekly benefit amount computed for his new benefit year.

As the change contained in the third paragraph of this section relating to the weeks worked qualification would invalidate basic data upon which benefit qualification determinations must be made the satisfaction of the weeks worked requirement will require as to base year weeks ending in the second two quarters of 1972 that the individual will have earned not less than the "qualifying weekly wage" computed for the calendar year 1971. Nothing in this paragraph or in the preceding paragraph shall be deemed to justify or support the redetermination of any monetary determination denying the establishment of a benefit year made prior to the *effective date of this 1973 amendatory act.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his wages at regular intervals. [1973 c 73 § 1; 1970 ex.s. c 2 § 2; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998–143. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

***Effective date—1973 c 73:** "Sections 7, 8, 10, 11, and 12 of this 1973 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.]

Reviser's note: The effective date of sections 7, 8, 10, 11, and 12 was March 8, 1973. The effective date of sections 1, 2, 3, 4, 6 and 9 was July 1, 1973. Section 5 referred to above was vetoed.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.040 Benefits. "Benefits" means the compensation payable to an individual, as provided in this title, with respect to his unemployment. [1945 c 35 § 5; Rem. Supp. 1945 § 9998–144. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 219 § 19; 1937 c 162 § 19.]

50.04.050 Calendar quarter. "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st. [1945 c 35 § 6; Rem. Supp. 1945 § 9998–145. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.060 Commissioner. "Commissioner" means the administrative head of the state employment security department referred to in this title. [1947 c 215 § 1; 1945 c 35 § 7; Rem. Supp. 1947 § 9998–146. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.070 Contributions. "Contributions" means the money payments due to the state unemployment compensation fund as provided in RCW 50.24.010. [1971 c 3 § 1; 1951 c 215 § 1; 1945 c 35 § 8; Rem. Supp. 1945 § 9998-147. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.072 Contributions—"Contributions" and "payments in lieu of contributions" as money payments and taxes due state. The terms "contributions" and "payments in lieu of contributions" used in this title, whether singular or plural, designate the money payments to be made to the state unemployment compensation fund and are deemed to be taxes due to the state of Washington. [1971 c 3 § 3; 1959 c 266 § 8.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Construction—1959 c 266: "The provisions of section 8 of this amendatory 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." [1959 c 266 § 9.] This applies to RCW 50.04.072.

50.04.073 Contributions—As including "payments in lieu of contributions"—Scope. The term "contributions" as used in this title shall be deemed to include "payments in lieu of contributions" to the extent that such usage is consistent with the purposes of this title. Such construction shall include but not be limited to those portions of this title dealing with assessments, interest, liens, collection procedures and remedies, administrative and judicial review, and the imposition of administrative, civil and criminal sanctions. [1971 c 3 § 4.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.080 Employer. "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title.

Irrespective of any other inconsistent provisions of this title, any employing unit shall also be deemed to be an employer for the purposes of this title to the same extent that services performed for such employing unit constitute subject employment under the provisions of any federal tax against which credit may be taken for contributions paid into a state unemployment compensation fund.

Irrespective of any provision in this title to the contrary any employing unit which employs individuals whose employment must be covered by the unemployment insurance laws of this state for services performed subsequent to December 31, 1971 as a condition of approval of the unemployment insurance laws of this state

under section 3304(a) of the internal revenue code of 1954, as amended, will be considered an employer as to such individual and shall be subject to contributions on all wages paid subsequent to December 31, 1971, or reimbursement payments to cover benefits paid based on services performed subsequent to December 31, 1971, depending on the law applicable. [1971 c 3 § 5; 1949 c 214 § 2; 1945 c 35 § 9; Rem. Supp. 1949 § 9998-148. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.090 Employing unit. "Employing unit" means any individual or any type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had in its employ or in its "employment" one or more individuals performing services within this state. [1947 c 215 § 2; 1945 c 35 § 10; Rem. Supp. 1947 § 9998-149. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.100 Employment. "Employment", subject only to the other provisions of this title, means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship, including service in interstate commerce, performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied.

Personal services performed for an employing unit by one or more contractors or subcontractors acting individually or as a partnership, which do not meet the provisions of RCW 50.04.140, shall be considered employment of the employing unit: *Provided, however,* That such contractor or subcontractor shall be an employer under the provisions of this title in respect to personal services performed by individuals for such contractor or subcontractor. [1945 c 35 § 11; Rem. Supp. 1945 § 9998-150. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.110 Employment—Situs of services. The term "employment" shall include an individual's entire service performed within or without or both within and without this state, if

- (1) The service is localized in this state; or
- (2) The service is not localized in any state, but some of the service is performed in this state, and
 - (a) the base of operations, or if there is no base of operations, then the place from which such service is directed or controlled is in this state; or
 - (b) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state; or
 - (3) The service is performed within the United States, the Virgin Islands or Canada, if

(a) such service is not covered under the unemployment compensation law of any other state, the Virgin Islands or Canada, and

(b) the place from which the service is directed or controlled is in this state. [1971 c 3 § 6; 1945 c 35 § 12; Rem. Supp. 1945 § 9998-151. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.115 Employment—Out of state service, election. Services not covered under RCW 50.04.110 or 50.04.116 which are performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this title if the individual performing such services is a resident of this state and the commissioner approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this title. [1971 c 3 § 8; 1945 c 35 § 13; Rem. Supp. 1945 § 9998-152. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1937 c 162 § 19. Formerly RCW 50.04.130.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.116 Employment—Out of state service, when included—"American employer" defined. The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands) in the employ of an American employer (other than service which is deemed "employment" under the provisions of RCW 50.04.110 or 50.04.120 or the parallel provisions of another state's law), if:

(1) The employer's principal place of business in the United States is located in this state; or

(2) The employer has no place of business in the United States but

(a) the employer is an individual who is a resident of this state; or

(b) the employer is a corporation which is organized under the laws of this state; or

(c) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(3) None of the criteria [in] subsections (1) and (2) of this section is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the laws of this state.

(4) An "American employer", for the purposes of this section, means a person who is

(a) an individual who is a resident of the United States; or

(b) a partnership if two-thirds or more of the partners are residents of the United States; or

(c) a trust, if all of the trustees are residents of the United States; or

(d) a corporation organized under the laws of the United States or of any state. [1971 c 3 § 7.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.120 Employment—Localized service. Service shall be deemed to be localized within a state, if

(1) the service is performed entirely within the state; or

(2) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions. [1945 c 35 § 14; Rem. Supp. 1945 § 9998-153. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.140 Employment—Exception tests. Services performed by an individual for remuneration shall be deemed to be employment subject to this title unless and until it is shown to the satisfaction of the commissioner that

(1) such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and

(2) such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(3) such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service. [1945 c 35 § 15; Rem. Supp. 1945 § 9998-154. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.150 Employment—Agricultural labor. The term "employment" shall not include service performed:

(1) On a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wild life, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or

(2) In packing, packaging, grading, storing, or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations. The exclusions from the term "employment" provided in this paragraph shall not be deemed to be applicable with respect to commercial packing houses, commercial storage establishments, commercial canning, commercial freezing,

or any other commercial processing or with respect to services performed in connection with the cultivation, raising, harvesting and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption. [1957 c 264 § 1; 1947 c 215 § 3; 1945 c 35 § 16; Rem. Supp. 1945 § 9998-155. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.160 Employment—Domestic service. The term "employment" shall not include domestic service in a private home, local college club, or local chapter of a college fraternity or sorority: *Provided, however,* That the terms local college club and local chapter of a college fraternity or sorority shall not be deemed to include alumni clubs or chapters. [1947 c 215 § 4; 1945 c 35 § 17; Rem. Supp. 1947 § 9998-156. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.170 Employment—Maritime service. The term "employment" shall include an individual's entire service as an officer or member of a crew of an American vessel wherever performed and whether in intrastate or interstate or foreign commerce, if the employer maintains within this state at the beginning of the pay period an operating office from which the operations of the vessel are ordinarily and regularly supervised, managed, directed and controlled. The term "employment" shall not include services performed as an officer or member of the crew of a vessel not an American vessel and services on or in connection with an American vessel under a contract of service which is not entered into within the United States and during the performance of which the vessel does not touch at a port of the United States.

"American vessel", means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state. [1949 c 214 § 3; 1947 c 215 § 5; 1945 c 35 § 18; Rem. Supp. 1949 § 9998-157. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Employees of ferry system operated by toll bridge authority to be placed under unemployment compensation: RCW 47.64.050.

50.04.180 Family employment. The term "employment" shall not include service performed by an individual in the employ of his or her spouse, nor shall it include service performed by an unmarried individual under the age of eighteen years in the employ of his or her parent or step-parent. [1973 c 73 § 2; 1951 c 265 § 6; 1945 c 35 § 19; Rem. Supp. 1945 § 9998-158. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective date—1973 c 73: See note following RCW 50.04.030.

50.04.200 Employment—Local governmental services—Time limitation. The term "employment" shall not include service performed in the employ of any political subdivision of this state or of any instrumentality of a political subdivision: *Provided,* That this exemption shall not be deemed to apply to public utility districts and public power authorities, nor shall this exemption be deemed to apply if any political subdivision of this state or of any instrumentality of a political subdivision voluntarily elects coverage for all or any distinct class or group of individuals in its employ: *Provided, further,* That no political subdivision of this state or any instrumentality of a political subdivision may cover, under the provisions of this section, services performed in its employ subsequent to December 31, 1971; and that any election for such coverage shall be canceled as of December 31, 1971.

Any political subdivision of this state or any instrumentality of a political subdivision is hereby authorized to pay to the unemployment compensation division for the unemployment compensation fund contributions required of employers by the provisions of this title for services performed for such employer prior to January 1, 1972. [1971 c 3 § 9; 1953 ex.s. c 8 § 1; 1953 c 276 § 1; 1951 c 265 § 7; 1945 c 35 § 21; Rem. Supp. 1945 § 9998-160. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.210 Employment—Foreign governmental services. The term "employment" shall not include service performed in the employ of any other state or its political subdivisions, or of the United States government, or of any instrumentality of any other state or states or their political subdivisions, or the United States; except that if the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation act, then, to the extent permitted by congress, and from and after the date when such permission becomes effective all the provisions of this title shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: *Provided,* That if this state should not be certified by the social security board under section 903 of the social security act, as amended, for any year, then the payment required of such instrumentalities with respect to such year shall be deemed to be erroneously collected and shall be refunded by the commissioner from the fund in accordance with the provisions of this title relating to adjustments and refunds of contributions or interest which have been paid. [1945 c 35 § 22; Rem. Supp. 1945 § 9998-161. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.220 Employment—Services covered by federal act. The term "employment" shall not include service with respect to which unemployment compensation

is payable under an unemployment compensation system established by an act of congress: *Provided*, That the commissioner is hereby authorized to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner provided in this title for publication of general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this title, acquired right to unemployment compensation under such act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this title. [1945 c 35 § 23; Rem. Supp. 1945 § 9998-162. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.230 Employment—Services of insurance agents and solicitors, real estate brokers and real estate salesmen, and investment company agents and solicitors. The term "employment" shall not include service performed by an insurance agent or insurance solicitor or a real estate broker or a real estate salesman to the extent he is compensated by commission and service performed by an investment company agent or solicitor to the extent he is compensated by commission, the [The] term "investment company", as used in this subsection [section], to be construed as meaning an investment company as defined in the act of congress entitled "Investment Company Act of 1940." [1947 c 5 § 24; 1945 c 35 § 24; Rem. Supp. 1947 § 9998-162a.]

50.04.235 Employment—Outside salesmen paid by commission. The term "employment" shall not include services as an outside salesman of merchandise paid solely by way of commission; and such services must have been performed outside of all the places of business of the enterprises for which such services are performed only. [1957 c 181 § 1.]

50.04.240 Employment—Newsboys' services. The term "employment" shall not include service as a newsboy selling or distributing newspapers on the street or from house to house. [1945 c 35 § 25; Rem. Supp. 1945 § 9998-163. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.250 Employment—Services regarding mushrooms. The term "employment" shall not include service in connection with the raising or harvesting of mushrooms. [1945 c 35 § 26; Rem. Supp. 1945 § 9998-164. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.260 Employment—Specially excepted services. The term "employment" shall not include service performed in any calendar quarter in the employ of any of the following organizations, if (i) the remuneration for such services is less than fifty dollars; or (ii) such service is in connection with the collection of dues or premiums for a fraternal benefit society, order, or association and is performed away from the home office or

is ritualistic service in connection with any such society, order, or association; or (iii) such service is performed by a student who is enrolled and who is regularly attending classes at a school, college or university:

- (1) Labor organizations;
- (2) mutual savings banks not having a capital stock represented by shares;
- (3) fraternal beneficiary societies, orders, or associations;
 - (a) operating under the lodge system or for the exclusive benefit of members of a fraternity itself operating under the lodge system; and
 - (b) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;
- (4) domestic saving and loan associations substantially all the business of which is confined to making loans to members; and cooperative banks without capital stock organized and operated for mutual purposes and without profit;
- (5) cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual;
- (6) business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;
- (7) civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to individuals in the employment of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes;
- (8) clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder;
- (9) benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if eighty-five percent or more of the incomes consists of amounts collected from members for the sole purpose of meeting losses and expenses;
- (10) farmers' or other mutual hail, cyclone, casualty, or fire insurance companies or associations (including intersurers and reciprocal underwriters) the income of which is used or held for the purpose of paying losses or expenses;
- (11) farmers', fruit growers', or like associations organized and operated on a cooperative basis, (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products

furnished by them; or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or eight percent a year, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, providing the value of the purchases made for persons who are neither members nor producers does not exceed fifteen percent of the value of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this paragraph;

(12) corporations organized by an association exempt under the provisions of paragraph (11) or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed not to exceed the legal rate of interest in the state of incorporation or eight percent a year, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose;

(13) corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(14) corporations organized under act of congress, if such corporations are instrumentalities of the United States and if, under such act, as amended and supplemented, such corporations are exempt from federal income taxes;

(15) teachers' retirement fund associations of a purely local character, if (a) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual; and (b) the income consists solely of amounts received from public taxation, amounts received from assessments upon the teaching salaries of members, and income in respect of investments;

(16) religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such association or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the net income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received. [1951 c 265 § 1; 1945 c 35 § 27; Rem. Supp. 1945 § 9998-165. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Employees of ferry system operated by toll bridge authority to be placed under unemployment compensation: RCW 47.64.050.

50.04.270 Employment—Casual labor. The term "employment" shall not include casual labor not in the course of the employer's trade or business (labor which does not promote or advance the trade or business of the employer). Temporary labor in the usual course of an employer's trade or business shall not be deemed to be casual labor. [1945 c 35 § 28; Rem. Supp. 1945 § 9998-166. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.280 Employment—"Pay period" determination. If the services performed during one-half or more of any pay period by an individual for an employing unit constitute employment, all of the services of such individual for such period shall be deemed to be employment, but if the services performed during more than one-half of any such pay period by an individual for an employing unit do not constitute employment, then none of the services of such individual on behalf of such employing unit for such period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than thirty-one consecutive days for which a payment of remuneration is ordinarily made to an individual by the employing unit. [1945 c 35 § 29; Rem. Supp. 1945 § 9998-167. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.290 Employment office. "Employment office" means a free public employment office, or branch thereof, operated by this or any other state as a part of a state controlled system of public employment offices, or by a federal agency or any agency of a foreign government charged with the administration of an unemployment compensation program or free public employment offices. All claims for unemployment compensation benefits, registrations for employment, and all job or placement referrals received or made by any of

the employment offices as above defined and pursuant to regulation of the commissioner subsequent to December 31, 1941, are hereby declared in all respects to be valid. The commissioner is authorized to make such investigation, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this title as he deems necessary or appropriate to facilitate the administration of any state or federal unemployment compensation or public employment service law and in like manner to accept and utilize information, services and facilities made available to the state by the agency charged with the administration of any such unemployment compensation or public employment service law. Any such action taken by the commissioner subsequent to December 31, 1941, is hereby declared to be in all respects valid. [1945 c 35 § 30; Rem. Supp. 1945 § 9998-168. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

50.04.295 Payments in lieu of contributions. "Payments in lieu of contributions" means money payments due to the state unemployment compensation fund as provided in RCW 50.44.060. [1971 c 3 § 2.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.300 State. "State" includes, in addition to the states of the United States of America, the District of Columbia and the Commonwealth of Puerto Rico. [1971 c 3 § 10; 1945 c 35 § 31; Rem. Supp. 1945 § 9998-169. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.310 Unemployed individual. An individual shall be deemed to be "unemployed" in any week during which he performs no services and with respect to which no remuneration is payable to him, or in any week of less than full time work, if the remuneration payable to him with respect to such week is less than one and one-third times his weekly benefit amount plus five dollars. The commissioner shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to such types of unemployment as the commissioner deems necessary. [1973 2nd ex.s. c 7 § 1; 1945 c 35 § 32; Rem. Supp. 1945 § 9998-170. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Application of act—1973 2nd ex.s. c 7: "This act shall apply to weeks of unemployment commencing on or after January 6, 1974." [1973 2nd ex.s. c 7 § 4.] "This act" consists of amendments to RCW 50.04.310, 50.04.323 and 50.20.130 by 1973 2nd ex.s. c 7.

50.04.320 Wages, remuneration. For the purpose of payment of contributions, "wages" means the remuneration paid by one employer during any calendar year to an individual in its employment under this title or the unemployment compensation law of any other state in the amount specified in RCW 50.24.010. If an employer (hereinafter referred to as a successor employer) during

any calendar year acquires substantially all the operating assets of another employer (hereinafter referred to as a predecessor employer) or assets used in a separate unit of a trade or business of a predecessor employer, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor employer, then, for the purposes of determining the amount of remuneration paid by the successor employer to such individual during such calendar year which is subject to contributions, any remuneration paid to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer.

For the purpose of payment of benefits, "wages" means the remuneration payable by one or more employers to an individual for employment under this title during his base year.

"Remuneration" means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash. The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be estimated and determined in accordance with rules prescribed by the commissioner. [1970 ex.s. c 2 § 3; 1953 ex.s. c 8 § 2; 1951 c 265 § 3; 1949 c 214 § 4; 1947 c 215 § 6; 1945 c 35 § 33; Rem. Supp. 1949 § 9998-171. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.323 Wages, remuneration—Government or private retirement pension plan payments—Effect upon eligibility—Reduction in benefits—Exceptions. Any payments which an individual has claimed, is receiving or has received under a government or private retirement pension plan to which a base year employer has contributed on behalf of such individual shall reduce the unemployment compensation payable to him on the following basis:

(1) If such payment, prorated weekly, equals or exceeds the weekly benefit amount to which he would normally be entitled on the basis of his base year earnings then he shall be totally ineligible;

(2) If such payment, prorated weekly, is less than the weekly benefit amount to which he would normally be entitled on the basis of this title and regulations enacted pursuant thereto, his weekly benefit amount shall be reduced by the amount which his prorated weekly pension amount exceeds twelve dollars. The reduced benefit amount so computed, if not a multiple of one dollar, shall be raised to the next higher multiple of one dollar.

Any amounts deducted by reason of this section shall not be available for the payment of future benefits, that is, the individual's total benefit entitlement shall be reduced by the amount of benefits paid plus any amounts deducted pursuant to this section.

Payments received under the old age and survivors insurance program contained in Title II of the federal social security act, as amended, payments received on

account of disability rather than on account of age or length of service and, commencing with benefit years beginning on and after July 1, 1973, payments attributable to retirement pensions which are based in full on wages earned prior to the individual's base year shall not operate to reduce an individual's weekly benefit amount.

Payments claimed or received under a government or a private pension plan shall not be considered wages subject to contributions under this title nor shall such payments be considered in determining base year wages.

In the event that a retroactive pension or retirement plan covers a period in which an individual received benefits under the provisions of this title, the amount in excess of the amount to which such individual would have been entitled had such retirement or pension plan been considered as provided in this section shall be recoverable under RCW 50.20.190. [1973 2nd ex.s. c 7 § 2; 1973 1st ex.s. c 167 § 1; 1970 ex.s. c 2 § 19.]

Application of act—1973 2nd ex.s. c 7: See note following RCW 50.04.310.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.330 Wages, remuneration—Retirement and disability payments excepted. Prior to January 1, 1951, the term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ under a plan or system established by such employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any payment) on account of retirement, sickness or accident disability, or medical and hospitalization expenses in connection with sickness or accident disability. After December 31, 1950, the term "wages" shall not include:

(1) The amount of any payment made (including any amount paid by an employing unit for insurance or annuities, or into a fund to provide for any such payment), to, or on behalf of, an individual or any of his dependents under a plan or system established by an employing unit which makes provision generally for individuals performing service for it (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (a) retirement, or (b) sickness or accident disability, or (c) medical or hospitalization expenses in connection with sickness or accident disability or (d) death;

(2) the amount of any payment by an employing unit to an individual performing service for it (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(3) the amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employing unit to, or on behalf of, an individual performing services for it after the expiration of six calendar months following the last calendar

month in which the individual performed services for such employing unit;

(4) the amount of any payment made by an employing unit to, or on behalf of, an individual performing services for it or his beneficiary (a) from or to a trust exempt from tax under section 165(a) of the federal internal revenue code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust, or (b) under or to an annuity plan which, at the time of such payments, meets the requirements of section 165(a)(3), (4), (5), and (6) of the federal internal revenue code; or

(5) the amount of any payment (other than vacation or sick pay) made to an individual after the month in which he attains the age of sixty-five, if he did not perform services for the employing unit in the period for which such payment is made. [1951 c 265 § 4; 1949 c 214 § 5; 1945 c 35 § 34; Rem. Supp. 1949 § 9998-173. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.340 Wages, remuneration—Death benefits excepted. Prior to January 1, 1951, the term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ under a plan or system established by such employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any payment) on account of death, provided the individual in its employ

(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit; and

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit. [1951 c 265 § 5; 1949 c 214 § 6; 1945 c 35 § 35; Rem. Supp. 1949 § 9998-173. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

50.04.350 Wages, remuneration—Excepted payments. The term "wages" shall not include the payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in employment under section 1400 of the federal internal revenue code, as amended, or any amount paid to a person in the military service for any pay period during which he performs no service for the employer: *Provided, however,* That prior to January 1, 1952, the term "wages" shall not include dismissal payments which an employing unit is not legally required to make. [1951 c 265 § 2;

1945 c 35 § 36; Rem. Supp. 1945 § 9998-174. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

50.04.355 Wages, remuneration—Average annual wage—Average weekly wage—Qualifying annual wage—Qualifying weekly wage. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", a "qualifying annual wage", and a "qualifying weekly wage" shall be computed from information for the preceding calendar year reported by all employers as defined in RCW 50.04.080 on employers' contribution reports (including corrections thereof) filed within three months after the close of that year. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months if the result is not a multiple of one dollar, and rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "qualifying annual wage" shall be computed by multiplying the "average annual wage" by fifteen percent and if the result is not a multiple of fifty dollars, rounding the result to the next lower multiple of fifty dollars. The "qualifying weekly wage" shall be computed by multiplying the "average weekly wage" by fifteen percent and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1973 c 73 § 3; 1970 ex.s. c 2 § 6.]

Effective date—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.360 Week. "Week" means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe. [1945 c 35 § 37; Rem. Supp. 1945 § 9998-175. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Chapter 50.08

ESTABLISHMENT OF DEPARTMENT

Sections

- 50.08.010 Employment security department established.
50.08.020 Divisions established.

50.08.010 Employment security department established. There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor. [1953 ex.s. c 8 § 3; 1947 c 215 § 8; 1945 c 35 § 38; Rem. Supp. 1947 § 9998-176. Prior: 1939 c 19 § 1; 1937 c 162 § 12.]

50.08.020 Divisions established. There are hereby established in the employment security department two coordinate divisions to be known as the unemployment

compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington state employment service division to any federal agency. [1973 1st ex.s. c 158 § 1; 1947 c 215 § 9; 1945 c 35 § 39; Rem. Supp. 1947 § 9998-177. Prior: 1943 c 127 § 9; 1939 c 214 § 7; 1937 c 162 § 9.]

Effective date—1973 1st ex.s. c 158: "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 158 § 21.] This applies to the amendments to RCW 50.08.020, 50.12.020, 50.12.040, 50.12.180, 50.20.070, 50.20.100, 50.20.190, 50.24.040, 50.24.050, 50.24.130, 50.29.010, 50.29.040, 50.29.060, 50.29.070, 50.32.090 and 50.32.120-50.32.140 by 1973 1st ex.s. c 158, to RCW 50.24.015 and to the repeal of RCW 47.64.050.

Chapter 50.12 ADMINISTRATION

Sections

- 50.12.010 Commissioner's duties and powers.
50.12.020 Personnel appointed by commissioner.
50.12.031 Personnel board—Expenses of board.
50.12.040 Rules and regulations.
50.12.050 Reciprocal benefit arrangements.
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50.12.070 Employing unit records.
50.12.080 Arbitrary reports.
50.12.090 Interstate use of employing unit records.
50.12.100 Compulsory production of records and information.
50.12.110 Information from employing unit records confidential.
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50.12.130 Oaths and witnesses.
50.12.140 Destruction of office records.
50.12.150 Representation by attorney general.
50.12.160 Publication of title, rules and regulations, reports, etc.
50.12.170 Services and fees of sheriffs.
50.12.180 State-federal cooperation.
50.12.190 Employment stabilization.
50.12.200 State advisory council—Committees and councils.

Administration of OASI plans for members of teachers' retirement and state employees' retirement systems: Chapters 41.33, 41.41 RCW.

Merit system: Chapter 41.06 RCW.

50.12.010 Commissioner's duties and powers. The commissioner shall administer this title. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication and in the manner, not inconsistent with the provisions of this title, which the commissioner shall prescribe. The commissioner, in accordance with the provisions of this title, shall determine the organization and methods of

procedure of the divisions referred to in this title, and shall have an official seal which shall be judicially noticed. Not later than the thirty-first day of December of each year, he shall submit to the governor a report covering the administration and operation of this title during the preceding fiscal year, July 1 through June 30, and shall make such recommendations for amendments to this title as he deems proper: *Provided*, That the report submitted in 1955 shall cover the eighteen months beginning January 1, 1954. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the governor and legislature and make recommendations with respect thereto. [1955 c 286 § 1; 1949 c 214 § 7; 1945 c 35 § 40; Rem. Supp. 1949 § 9998-178. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 12 § 2.]

50.12.020 Personnel appointed by commissioner. The commissioner is authorized to appoint and fix the compensation of such officers, accountants, experts, and other personnel as may be necessary to carry out the provisions of this title: *Provided*, That such appointment shall be made on a nonpartisan merit basis in accordance with the provisions of this title relating to the selection of personnel. The commissioner may delegate to any person appointed such power and authority as he deems reasonable and proper for the effective administration of this title, including the right to decide matters placed in his discretion under this title, and may in his discretion bond any person handling moneys or signing checks hereunder.

The commissioner shall not appoint or employ any person who is an officer or committee member of any political party organization or who holds or is a candidate for any partisan elective public office. [1973 1st ex.s. c 158 § 2; 1945 c 35 § 41; Rem. Supp. 1945 § 9998-179. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.031 Personnel board—Expenses of board. Members of the board shall be allowed traveling expenses of not to exceed ten cents per mile and twenty-five dollars per diem for expenses while traveling to and from and attending regularly called meetings. [1959 c 127 § 2.]

Appointment of institutional chaplains: RCW 72.01.210.

50.12.040 Rules and regulations. Regular and emergency rules and regulations shall be adopted, amended, or repealed by the commissioner in accordance with the provisions of Title 34 RCW and the rules or regulations

adopted pursuant thereto. [1973 1st ex.s. c 158 § 3; 1945 c 35 § 43; Rem. Supp. 1945 § 9998-181. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.050 Reciprocal benefit arrangements. As used in this section the terms "other state" and "another state" shall be deemed to include any state or territory of the United States, the District of Columbia and any foreign government and, where applicable, shall also be deemed to include the federal government or provisions of a law of the federal government, as the case may be.

As used in this section the term "claim" shall be deemed to include whichever of the following terms is applicable, to wit: "Application for initial determination", "claim for waiting period credit", or "claim for benefits".

The commissioner shall enter into an agreement with any other state whereby in the event an individual files a claim in another state against wages earned in employment in this state, or against wage credits earned in this state and in any other state or who files a claim in this state against wage credits earned in employment in any other state, or against wages earned in this state and in any other state, the claim will be paid by this state or another state as designated by the agreement in accordance with a determination on the claim as provided by the agreement and pursuant to the qualification and disqualification provisions of this title or under the provisions of the law of the designated paying state (including another state) or under such a combination of the provisions of both laws as shall be determined by the commissioner as being fair and reasonable to all affected interests, and whereby the wages of such individual, if earned in two or more states (including another state) may be combined, and further, whereby this state or another state shall reimburse the paying state in an amount which shall bear the same ratio to the amount of benefits already paid as the amount of wage credits transferred by this state or another state, and used in the determination, bear to the total wage credits used in computing the claimant's maximum amount of benefits potentially payable.

Whenever any claim is filed by an individual involving the combination of wages or a reciprocal arrangement for the payment of benefits, which is governed by the provisions of this section, the employment security department of this state, when not designated as the paying state, shall promptly make a report to the other state making the determination, showing wages earned in employment in this state.

The commissioner is hereby authorized to make to another state and to receive from another state reimbursements from or to the unemployment compensation fund in accordance with arrangements made pursuant to the provisions of this section. [1971 c 3 § 11; 1959 c 266 § 1; 1949 c 214 § 8; 1945 c 35 § 44; Rem. Supp. 1949 § 9998-182. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

~~Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.~~

50.12.060 Reciprocal coverage arrangements. The commissioner is hereby authorized to enter into arrangements with the appropriate agencies of other states, foreign governments or the federal government whereby services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states (1) in which any part of such individual's service is performed, or (2) in which such individual has his residence, or (3) in which the employing unit maintains a place of business: *Provided*, That there is in effect, as to such services, an election by the employing unit with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state. [1945 c 35 § 45; Rem. Supp. 1945 § 9998–183. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.070 Employing unit records. Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he deems necessary for the effective administration of this title. Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe, setting forth the remuneration paid for employment to workers in its employ, the names of all such workers and such other information as the commissioner may by regulation prescribe. [1945 c 35 § 46; Rem. Supp. 1945 § 9998–184. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.080 Arbitrary reports. If any employing unit fails to make or file any report or return required by this title, or any regulation made pursuant hereto, the commissioner may, upon the basis of such knowledge as may be available to him, arbitrarily make a report on behalf of such employing unit and the report so made shall be deemed to be prima facie correct. In any action or proceedings brought for the recovery of contributions and interest due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department, or a certificate that a return has been filed by or for an employer or estimated by reason of lack of a return, shall be prima facie evidence of the amount of such payroll for the period stated in the certificate. [1951 c 215 § 2; 1945 c 35 § 47; Rem. Supp. 1945 § 9998–185. Prior: 1943 c 127 § 8.]

50.12.090 Interstate use of employing unit records. The records of an employer maintained in this state pertaining to employment of persons in another state shall be open to representatives of the commissioner to permit cooperation with other state unemployment compensation agencies in ascertaining information necessary to administer the unemployment compensation acts of such other states. [1945 c 35 § 48; Rem. Supp. 1945 § 9998–186.]

50.12.100 Compulsory production of records and information. In case of contumacy or refusal to obey subpoenas issued to any person, any court of the state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by any duly authorized representative of the commissioner, shall have jurisdiction to issue to such person an order requiring such person to appear before such authorized representative, there to produce evidence, if so ordered, or there to give testimony touching the matter under investigation, or in question. Failure to obey such order of the court may be punished by said court as a contempt thereof. [1945 c 35 § 49; Rem. Supp. 1945 § 9998–187. Prior: 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.110 Information from employing unit records confidential. Information obtained from employing unit records under the provisions of this title or obtained from any individual pursuant to the administration of this title shall be confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties when authorized by the director of the state agency by which they are employed and then only in accordance with regulations prescribed by the commissioner) in any manner revealing an individual's or employing unit's identity, but any interested party at a hearing before the appeal tribunal or the commissioner shall be supplied with information from such records to the extent necessary for the proper presentation of the case in question: *Provided, however*, Records, with any necessary authentication thereof, required in the prosecution of any criminal action brought by another state, the United States or a foreign government for misrepresentation to obtain benefits under the law of this state shall be made available to the agency administering the employment security law of any such state, the United States or a foreign government for the purpose of such prosecution: *Provided further*, That records of unemployment insurance claims, disclosure of which is not prohibited by federal law, which are material to the apprehension of one who has been charged with a crime, may be made available for inspection to a governmental law enforcement officer upon the presentation of a subpoena for such records issued by a court of competent jurisdiction. [1971 ex.s. c 255 § 1; 1951 c 215 § 3; 1945 c 35 § 50; Rem. Supp. 1945 § 9998–188. Prior: 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.120 Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before any duly authorized representative of the commissioner or any appeal tribunal in obedience to the subpoena of such representative of the commissioner or such appeal tribunal, on the ground 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 individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [1945 c 35 § 51; Rem. Supp. 1945 § 9998–189. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.130 Oaths and witnesses. In the discharge of the duties imposed by this title, the appeal tribunal and any duly authorized representative of the commissioner shall have power to administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed to be necessary as evidence in connection with any dispute or the administration of this title. It shall be unlawful for any person, without just cause, to fail to comply with subpoenas issued pursuant to the provisions of this section. [1945 c 35 § 52; Rem. Supp. 1945 § 9998–190. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.140 Destruction of office records. The commissioner may destroy any form, claim, ledger, check, letter, or other record of the employment security department at the expiration of three years after such record was originated by or filed with the employment security department, except that warrants and claims, claim determination, employer liability forms and contribution reports may be destroyed at the expiration of six years after such form is originated by or filed with the employment security department, and except that this section shall not apply to records pertaining to grants, accounts or expenditures for administration, records of the unemployment compensation fund and the unemployment compensation administration fund. [1947 c 215 § 11; 1945 c 35 § 53; Rem. Supp. 1947 § 99998–191.]

Preservation and destruction of public records: Chapter 40.14 RCW.

50.12.150 Representation by attorney general. The attorney general shall be the general counsel of each and all divisions and departments under this title and it shall be his duty to institute and prosecute all actions and proceedings which may be necessary in the enforcement and carrying out of each, every, and all of the provisions of this title, and it shall be the duty of

the attorney general to assign such assistants and attorneys as may be necessary to the exclusive duty of assisting each, every, and all divisions and departments created under this title in the enforcement of this title. The salaries of such assistants shall be paid out of the unemployment compensation administration fund, together with their expenses fixed by the attorney general and allowed by the treasurer of the unemployment compensation administration fund when approved upon vouchers by the attorney general. [1945 c 35 § 54; Rem. Supp. 1945 § 9998–192. Prior: 1937 c 162 § 17.]

Attorney general: Chapter 43.10 RCW.

50.12.160 Publication of title, rules and regulations, reports, etc. The commissioner shall cause to be printed for distribution to the public the text of this title, the regulations and general rules, his annual reports to the governor, and any other material which he deems relevant and suitable and shall furnish the same to any person upon application therefor. [1945 c 35 § 55; Rem. Supp. 1945 § 9998–193.]

50.12.170 Services and fees of sheriffs. The sheriff of any county, upon request of the commissioner or his duly authorized representative, or upon request of the attorney general, shall, for and on behalf of the commissioner, perform the functions of service, distraint, seizure, and sale, authority for which is granted to the commissioner or his duly authorized representative. No bond shall be required by the sheriff of any county for services rendered for the commissioner, his duly authorized representative, or the attorney general. The sheriff shall be allowed such fees as may be prescribed for like or similar official services. [1945 c 35 § 56; Rem. Supp. 1945 § 9998–194.]

County sheriff: Chapter 36.28 RCW.

50.12.180 State-federal cooperation. The commissioner, through the Washington state employment service division, shall establish and maintain free public employment offices in such places as may be necessary for the proper administration of this title and for the purpose of performing such duties as are within the purview of the act of congress entitled "An Act to provide for the establishment of a national employment system and for other purposes," approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, Sec. 49(c), as amended).

In the administration of this title the commissioner shall cooperate to the fullest extent consistent with the provisions of this title, with any official or agency of the United States having powers or duties under the provisions of the said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act and there shall be observance of and compliance with the requirements thereof. The commissioner may cooperate with or enter into agreements with the railroad retirement board with

respect to the establishment, maintenance, and use of free employment service facilities, and make available to said board the state's records relating to the administration of this title, and furnish such copies thereof, at the expense of the board, as it may deem necessary for its purposes.

The commissioner shall comply with such provisions as the social security board, created by the social security act, approved August 14, 1935, as amended, may from time to time require, regarding reports and the correctness and verification thereof, and shall comply with the regulations of the social security board governing the expenditures of such sums as may be allotted and paid to this state under Title III of the social security act for the purpose of assisting the administration of this title. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

The governor is authorized to apply for an advance to the state unemployment fund and to accept the responsibility for the repayment of such advance in accordance with the conditions specified in Title XII of the social security act, as amended, in order to secure to this state and its citizens the advantages available under the provisions of such title.

The commissioner is also authorized and empowered to take such steps, not inconsistent with law, as may be necessary for the purpose of procuring for the people of this state all of the benefits and assistance, financial and otherwise, provided, or to be provided for, by or pursuant to any act of congress.

Upon request therefor the commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this title. [1973 1st ex.s. c 158 § 4; 1959 c 266 § 2; 1945 c 35 § 57; Rem. Supp. 1945 § 9998-195. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.190 Employment stabilization. The commissioner shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry and publish the results of investigations and research studies. [1945 c 35 § 58; Rem. Supp. 1945 § 9998-197. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.200 State advisory council—Committees and councils. The commissioner shall appoint a state advisory council composed of not more than nine members, of which three shall be representatives of employers, three shall be representatives of employees, and three shall be representatives of the general public who are not entitled to benefits under this title. Such council shall aid the commissioner in formulating policies and discussing problems related to the administration of this title and of assuring impartiality and freedom from political influence in the solution of such problems. The council shall serve without compensation. The commissioner may also appoint committees, and industrial or other special councils, to perform appropriate services. Members shall be reimbursed for any travel expense incurred in accordance with the travel regulations applicable to employees of the employment security department. [1953 ex.s. c 8 § 4; 1947 c 215 § 12; 1945 c 35 § 59; Rem. Supp. 1947 § 9998-197. Prior: 1941 c 253 § 17.]

Chapter 50.16 FUNDS

| Sections | |
|-----------|---|
| 50.16.010 | Unemployment compensation fund—Administrative contingency fund. |
| 50.16.020 | Administration of funds—Accounts. |
| 50.16.030 | Withdrawals from federal unemployment trust fund. |
| 50.16.040 | Management of funds upon discontinuance of federal unemployment trust fund. |
| 50.16.050 | Unemployment compensation administration fund. |
| 50.16.060 | Replacement of federal funds. |

50.16.010 Unemployment compensation fund—Administrative contingency fund. There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund and an administrative contingency fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable. The unemployment compensation fund shall consist of

- (1) all contributions and payments in lieu of contributions collected pursuant to the provisions of this title,
- (2) interest earned upon any moneys in the fund,
- (3) any property or securities acquired through the use of moneys belonging to the fund,
- (4) all earnings of such property or securities,
- (5) any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended,
- (6) all money recovered on official bonds for losses sustained by the fund,
- (7) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended,
- (8) all money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304), and
- (9) all moneys received for the fund from any other source.

All moneys in the unemployment compensation fund shall be commingled and undivided.

The administrative contingency fund shall consist of all interest on delinquent contributions collected pursuant to this title after June 20, 1953, all fines and penalties collected pursuant to the provisions of this title, and all sums recovered on official bonds for losses sustained by the fund: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. The amount in this fund in excess of one hundred thousand dollars on the close of business of the last day of each calendar quarter shall be immediately transferred to this state's account in the unemployment trust fund. Moneys available in the administrative contingency fund shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him that such expenditure is necessary for:

(a) The proper administration of this title and no federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(b) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation. [1973 c 73 § 4; 1969 ex.s. c 199 § 27; 1959 c 170 § 1; 1955 c 286 § 2; 1953 ex.s. c 8 § 5; 1945 c 35 § 60; Rem. Supp. 1945 § 9998-198. Prior: 1943 c 127 § 6; 1941 c 253 §§ 7, 10; 1939 c 214 § 11; 1937 c 162 § 13.]

Effective date—1973 c 73: See note following RCW 50.04.030.

50.16.020 Administration of funds—Accounts. The commissioner shall designate a treasurer and custodian of the unemployment compensation fund and of the administrative contingency fund, who shall administer such funds in accordance with the directions of the commissioner and shall issue his warrants upon them in accordance with such regulations as the commissioner shall prescribe. He shall maintain within the unemployment compensation fund three separate accounts as follows:

- (1) a clearing account,
- (2) an unemployment trust fund account, and
- (3) a benefit account.

All moneys payable to the unemployment compensation fund, upon receipt thereof by the commissioner, shall be forwarded to the treasurer, who shall immediately deposit them in the clearing account. Refunds payable pursuant to the provisions of this title from the unemployment compensation fund may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commissioner: *Provided, however*, That refunds of interest on delinquent contributions shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner.

After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Moneys in the clearing and benefit accounts and in the administrative contingency fund shall not be commingled with other state funds, but shall be deposited by the treasurer, under the direction of the commissioner, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund.

Such moneys shall be secured by said bank or public depository to the same extent and in the same manner as required by the general depository law of the state and collateral pledged shall be maintained in a separate custody account.

The treasurer shall give a bond conditioned upon the faithful performance of his duties as a custodian of the funds in an amount fixed by the state administrative board and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund. All sums recovered on official bonds for losses sustained by the unemployment compensation fund shall be deposited in such fund. All sums recovered on official bonds for losses sustained by the administrative contingency fund shall be deposited in such fund. [1953 ex.s. c 8 § 6; 1945 c 35 § 61; Rem. Supp. 1945 § 9998-199. Prior: 1943 c 126 §§ 6, 9; 1939 c 214 § 11; 1937 c 162 § 13.]

50.16.030 Withdrawals from federal unemployment trust fund. (1) Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner, except that money credited to this state's account pursuant to section 903 of the social security act, as amended, shall be used exclusively as provided in RCW 50.16.030(5). The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as he deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefits account.

(2) Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, and RCW 43.01.050, as

amended, shall not apply. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commissioner, or his duly authorized agent for that purpose.

(3) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund.

(4) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this title pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) specifies the purposes for which such money is appropriated and the amounts appropriated therefor,

(b) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and

(c) limits the amount which may be obligated during a twelve-month period beginning on July 1st and ending on the next June 30th to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, as amended, during the same twelve-month period and the twenty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated pursuant to RCW 50.16.030(4), (5) and (6) and charged against the amounts credited to the account of this state during any of such twenty-five twelve-month periods. For the purposes of RCW 50.16.030(4), (5) and (6), amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the twenty-fourth twelve-month period preceding such period: *Provided*, That any amount credited to this state's account under section 903 of the social security act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund shall be excluded from the unemployment compensation fund balance for the purpose of experience rating credit determination.

(5) Money credited to the account of this state pursuant to section 903 of the social security act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses of

administration and of public employment offices pursuant to RCW 50.16.030(4), (5) and (6).

(6) Money requisitioned as provided in RCW 50.16.030(4), (5) and (6) for the payment of expenses of administration shall be deposited in the unemployment compensation fund, but until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund. [1973 c 6 § 1; 1969 ex.s. c 201 § 1; 1959 c 170 § 2; 1945 c 35 § 62; Rem. Supp. 1945 § 9998-200. Prior: 1943 c 127 § 6; 1941 c 253 § 7.]

50.16.040 Management of funds upon discontinuance of federal unemployment trust fund. The provisions of this title, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein for this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commissioner, in accordance with the provisions of this title: *Provided*, That such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest bearing obligations of the United States of America: *And provided further*, That such investment shall at all times be made so that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commissioner. [1945 c 35 § 63; Rem. Supp. 1945 § 9998-201. Prior: 1941 c 253 § 7.]

50.16.050 Unemployment compensation administration fund. There is hereby established a fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund are hereby made available to the commissioner. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this title, and for no other purpose whatsoever. All moneys received from the United States of America, or any agency thereof, for said purpose pursuant to section

302 of the social security act, as amended, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this title. All moneys received from the United States employment service, United States department of labor, for said purpose pursuant to the act of congress approved June 6, 1933, as amended or supplemented by any other act of congress, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the public employment office system of this state. The unemployment compensation administration fund shall consist of all moneys received from the United States of America or any department or agency thereof, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed by the treasurer of the unemployment compensation fund under rules and regulations of the commissioner and none of the provisions of *section 5501 of Remington's Revised Statutes, as amended, shall be applicable to this fund. The treasurer last named shall be the treasurer of the unemployment compensation administration fund and shall give a bond conditioned upon the faithful performance of his duties in connection with that fund. All sums recovered on the official bond for losses sustained by the unemployment compensation administration fund shall be deposited in said fund. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to RCW 50.16.030 (6) shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in RCW 50.16.030(4), (5) and (6). [1959 c 170 § 3; 1947 c 215 § 13; 1945 c 35 § 64; Rem. Supp. 1947 § 9998-202. Prior: 1941 c 253 § 7; 1939 c 214 § 11; 1937 c 162 § 13.]

*Reviser's note: "section 5501 of Remington's Revised Statutes" (1909 c 133 § 1) is codified in RCW 43.01.050 and 43.85.130.

50.16.060 Replacement of federal funds. The state of Washington hereby pledges that it will replace within a reasonable time any moneys paid to this state under Title III of the social security act, and the Wagner-Peyser act, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of the Washington employment security act. [1959 c 170 § 4; 1945 c 35 § 67; Rem. Supp. 1945 § 9998-205.]

Chapter 50.20 BENEFITS AND CLAIMS

Sections

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50.20.010 Benefit eligibility conditions. An unemployed individual shall be eligible to receive waiting period credits or benefits with respect to any week in his eligibility period only if the commissioner finds that (1) he has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which he finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title;

(2) he has filed an application for an initial determination and made a claim for waiting period credit or for benefits in accordance with the provisions of this title;

(3) he is able to work, and is available for work in any trade, occupation, profession, or business for which he is reasonably fitted. To be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or his agents; and

(4) he has been unemployed for a waiting period of one week.

An individual's eligibility period for regular benefits shall be coincident to his established benefit year. An individual's eligibility period for additional or extended benefits shall be the periods prescribed elsewhere in this title for such benefits. [1973 c 73 § 6; 1970 ex.s. c 2 § 4; 1959 c 266 § 3; 1953 ex.s. c 8 § 7; 1951 c 265 § 9; 1951 c 215 § 11; 1949 c 214 § 9; 1945 c 35 § 68; Rem. Supp. 1949 § 9998-206. Prior: 1943 c 127 § 2; 1941 c 253 §§ 1, 2; 1939 c 214 § 2; 1937 c 162 § 4.]

Effective date—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.20.020 Waiting period credit limitation. No week shall be counted as a waiting period week,

(1) if benefits have been paid with respect thereto, and

(2) unless the individual was otherwise eligible for benefits with respect thereto, and

(3) unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits. [1949 c 214 § 10; 1945 c 35 § 69; Rem. Supp. 1949 § 9998–207.]

50.20.030 Pregnancy limitation. A woman who voluntarily quits work because of pregnancy shall be disqualified from benefits for the week in which she quits and thereafter through the terminal week of her pregnancy: *Provided, however,* That in any event a pregnant woman shall be disqualified from receiving benefits for any calendar week either preceding or subsequent to childbirth when she is precluded from engaging in her particular category of employment by reason of a pregnancy related federal or state statute or administrative rule or regulation. [1973 1st ex.s. c 167 § 2; 1970 ex.s. 2 § 20; 1955 c 286 § 3. Prior: 1945 c 35 § 70; Rem. Supp. 1945 § 9998–208.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.043 Training provision. No otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the commissioner, nor shall such individual be denied benefits with respect to any week in which he is in training with the approval of the commissioner by reason of the application of RCW 50.20.010(3) relating to availability for work and active search for work, or RCW 50.20.080 relating to failure to apply for, or refusal to accept suitable work. [1971 c 3 § 12.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.20.045 Employee separated from employment due to wage garnishment not disqualified. Subject to the provisions of RCW 7.33.160, an individual who is separated from his employment due to garnishment of his wages shall not be disqualified from receiving unemployment benefits because of such separation. [1969 ex.s. c 264 § 35.]

50.20.050 Disqualification for voluntary quit. An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he has left work voluntarily without good cause and thereafter until he has obtained work and earned wages of not less than his suspended weekly benefit amount in each of five calendar weeks: *Provided,* That disqualification under this section shall not extend beyond the tenth calendar week following the week in which such individual left work. [1970 ex.s. c 2 § 21; 1953 ex.s. c 8 § 8; 1951 c 215 § 12; 1949 c 214 § 12; 1947 c 215 § 15; 1945 c 35 § 73; Rem. Supp. 1949 § 9998–211. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.060 Disqualification for unemployment due to misconduct. An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he has been discharged or suspended for misconduct connected with his work and thereafter until he has obtained work and earned wages of not less than his suspended weekly benefit amount in each of five calendar weeks: *Provided,* That disqualification under this section shall not extend beyond the tenth calendar week following the week in which such individual was discharged or suspended. [1970 ex.s. c 2 § 22; 1953 ex.s. c 8 § 9; 1951 c 215 § 13; 1949 c 214 § 13; 1947 c 215 § 16; 1945 c 35 § 74; Rem. Supp. 1949 § 9998–212. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.070 Disqualification for misrepresentation. Irrespective of any other provisions of this title an individual shall be disqualified for benefits for any week with respect to which he has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and has thereby obtained or attempted to obtain any benefits under the provisions of this title, and for an additional twenty-six weeks commencing with the first week for which he completes an otherwise compensable claim for waiting period credit or benefits following the date of the delivery or mailing of the determination of disqualification under this section: *Provided,* That such disqualification shall not be applied after two years have elapsed from the date of the delivery or mailing of the determination of disqualification under this section, but all overpayments established by such determination of disqualification shall be collected as otherwise provided by this title. [1973 1st ex.s. c 158 § 5; 1953 ex.s. c 8 § 10; 1951 c 265 § 10; 1949 c 214 § 14; 1947 c 215 § 17; 1945 c 35 § 75; Rem. Supp. 1949 § 9998–213. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.20.080 Disqualification for refusal to work. An individual is disqualified for benefits, if the commissioner finds that he has failed without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner, or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commissioner. Such disqualification shall continue until he has obtained work and earned wages therefor of not less than his suspended weekly benefit amount in each of five weeks. [1959 c 321 § 1; 1953 ex.s. c 8 § 11; 1951 c 215 § 14; 1949 c 214 § 15; 1945 c 35 § 76; Rem. Supp. 1949 § 9998–214. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Effective date—1959 c 321: "This act shall take effect on July 5, 1959." [1959 c 321 § 4.] This applies to RCW 50.20.080, 50.20.120 and 50.20.130 as amended by chapter 321, Laws of 1959.

50.20.090 Labor dispute disqualification. An individual shall be disqualified for benefits for any week with respect to which the commissioner finds that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed: *Provided*, That this section shall not apply if it is shown to the satisfaction of the commissioner that

(1) he is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: *Provided*, That if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subdivision, be deemed to be a separate factory, establishment, or other premises. [1953 ex.s. c 8 § 12; 1945 c 35 § 77; Rem. Supp. 1945 § 9998-215. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

50.20.100 Suitable work factors. In determining whether work is suitable for an individual or whether an individual has left work voluntarily without good cause, the commissioner shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, the distance of the available work from his residence, and such other factors as the commissioner may deem pertinent, including state and national emergencies. [1973 1st ex.s. c 158 § 6; 1945 c 35 § 78; Rem. Supp. 1945 § 9998-216.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.20.110 Suitable work exceptions. Notwithstanding any other provisions of this title, no work shall be deemed to be suitable and benefits shall not be denied under this title to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; or

(2) if the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) if as a condition of being employed the individual would be required by the employing unit to join a company union or to resign from or refrain from joining any bona fide labor organization. [1945 c 35 § 79; Rem. Supp. 1945 § 9998-217.]

50.20.115 Unemployment due to vacation. When an unemployed individual is qualified for receipt of unemployment compensation benefits by the specific provisions of RCW 50.20.010, 50.20.120 and 50.20.130, and such individual is not specifically disqualified from receiving such benefits by reason of the provisions of RCW 50.20.030, 50.20.040, 50.20.090, 50.20.050, 50.20.060, 50.20.070 or 50.20.080, he shall, for all purposes of the unemployment compensation act, be deemed to be involuntarily unemployed and entitled to unemployment compensation benefits: *Provided*, That the cessation of operations by an employer for the purpose of granting vacations, whether by union contract or other reasons, shall in no manner be construed to be a voluntary quit nor a voluntary unemployment on the part of the employees. [1951 c 265 § 12.]

50.20.120 Amount of benefits. (1) Subject to the other provisions of this title benefits shall be payable to any eligible individual during his benefit year in a maximum amount equal to the lesser of thirty times the weekly benefit amount (determined hereinafter) or one-third of the individual's base year wages under this title.

(2) An individual's weekly benefit amount shall be an amount equal to one twenty-fifth of his total wages during that quarter of his base year in which such total wages were highest, except that if such computed amount is less than seventeen dollars, the weekly benefit amount shall be deemed to be seventeen dollars. The maximum amount payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th. The maximum amount payable weekly shall be fifty percent of the "average weekly wage" for the calendar year preceding such June 30th: *Provided*, That if any weekly benefit or maximum benefit amount computed herein is not a multiple of one dollar, it shall be adjusted to the nearest multiple of one dollar, except that if the computed amount ends in fifty cents, it shall be adjusted to the next higher multiple of one dollar. [1970 ex.s. c 2 § 5; 1959 c 321 § 2; 1955 c 209 § 1; 1951 c 265 § 11; 1949 c 214 § 16; 1945 c 35 § 80; Rem. Supp. 1949 § 9998-218. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.130 Deduction from weekly benefit amount. If an eligible individual is available for work for less than a full week, he shall be paid his weekly benefit amount reduced by one-seventh of such amount for each day that he is unavailable for work: *Provided*, That if he is unavailable for work for three days or more of a week, he shall be considered unavailable for the entire week.

Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less seventy-five percent of that part of the remuneration (if any) payable to him with respect to such week which is in excess of five dollars. Such benefit, if not a multiple of one dollar, shall be computed to the next higher multiple of one dollar. [1973 2nd ex.s. c 7 § 3; 1959 c 321 § 3; 1951 c 215 § 15; 1949 c 214 § 17; 1945 c 35 §

81; Rem. Supp. 1949 § 9998–219. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Application of act—1973 2nd ex.s. c 7: See note following RCW 50.04.310.

50.20.140 Filing applications and claims—Scope of initial determination—"Application for initial determination", "claim for benefits", "claim for waiting period" defined. An application for initial determination, a claim for waiting period, or a claim for benefits shall be filed in accordance with such regulations as the commissioner may prescribe. An application for an initial determination may be made by any individual whether unemployed or not. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his employment and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations and such notices, instructions and other material as the commissioner may by regulation prescribe. Such printed material shall be supplied by the commissioner to each employer without cost to him.

The term "application for initial determination" shall mean a request in writing for an initial determination. The term "claim for waiting period" shall mean a certification, after the close of a given week, that the requirements stated herein for eligibility for waiting period have been met. The term "claim for benefits" shall mean a certification, after the close of a given week, that the requirements stated herein for eligibility for receipt of benefits have been met.

A representative designated by the commissioner shall take the application for initial determination and for the claim for waiting period credits or for benefits. When an application for initial determination has been made, the employment security department shall promptly make an initial determination which shall be a statement of the applicant's base year wages, his weekly benefit amount, his maximum amount of benefits potentially payable and his benefit year. Such determination shall fix the general conditions under which waiting period credit shall be granted and under which benefits shall be paid during any period of unemployment occurring within the benefit year fixed by such determination. [1951 c 215 § 4; 1945 c 35 § 82; Rem. Supp. 1945 § 9998–220. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

50.20.150 Notice of application or claim. The applicant for initial determination, his most recent employing unit as stated by the applicant, and any other interested party which the commissioner by regulation prescribes, shall, if not previously notified within the same continuous period of unemployment, be given notice promptly in writing that an application for initial determination has been filed and such notice shall contain the reasons given by the applicant for his last separation from work. If, during his benefit year, the applicant becomes unemployed after having accepted subsequent work, and reports for the purpose of reestablishing his eligibility for benefits, a similar notice

shall be given promptly to his then most recent employing unit as stated by him, or to any other interested party which the commissioner by regulation prescribes.

Each base year employer shall be promptly notified of the filing of any application for initial determination which may result in a charge to his account. [1970 ex.s. c 2 § 7; 1951 c 215 § 5; 1945 c 35 § 83; Rem. Supp. 1945 § 9998–221. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.160 Redetermination. (1) A determination of amount of benefits potentially payable issued pursuant to the provisions of RCW 50.20.120 and 50.20.140 shall not serve as a basis for appeal but shall be subject to request by the claimant for reconsideration and/or for redetermination by the commissioner at any time within one year from the date of delivery or mailing of such determination, or any redetermination thereof: *Provided*, That in the absence of fraud or misrepresentation on the part of the claimant, any benefits paid prior to the date of any redetermination which reduces the amount of benefits payable shall not be subject to recovery under the provisions of RCW 50.20.190. A denial of a request to reconsider or a redetermination shall be furnished the claimant in writing and provide the basis for appeal under the provisions of RCW 50.32.020.

(2) A determination of denial of benefits issued under the provisions of RCW 50.20.180 shall become final, in absence of timely appeal therefrom: *Provided*, That the commissioner may reconsider and redetermine such determinations at any time within one year from delivery or mailing to correct an error in identity, omission of fact, or misapplication of law with respect to the facts.

(3) A determination of allowance of benefits shall become final, in absence of a timely appeal therefrom: *Provided*, That the commissioner may redetermine such allowance at any time within two years following the benefit year in which such allowance was made in order to recover any benefits improperly paid and for which recovery is provided under the provisions of RCW 50.20.190: *And provided further*, That in the absence of fraud, misrepresentation, or nondisclosure, this provision or the provisions of RCW 50.20.190 shall not be construed so as to permit redetermination or recovery of an allowance of benefits which having been made after consideration of the provisions of RCW 50.20.010(3), or the provisions of RCW 50.20.050, 50.20.060, 50.20.080, or 50.20.090 has become final.

(4) A redetermination may be made at any time to conform to a final court decision applicable to either an initial determination or a determination of denial or allowance of benefits. Written notice of any such redetermination shall be promptly given by mail or delivered to such interested parties as were notified of the initial determination or determination of denial or allowance of benefits and any new interested party or parties who, pursuant to such regulation as the commissioner may prescribe, would be an interested party. [1959 c 266 § 4; 1953 ex.s. c 8 § 13; 1951 c 215 § 6; 1945 c 35 § 84; Rem. Supp. 1945 § 9998–222. Prior: 1941 c 253 § 4.]

50.20.170 Payment of benefits. An individual who has received an initial determination finding that he is potentially entitled to receive waiting period credit or benefits shall, during the benefit year, be given waiting period credit or be paid benefits in accordance with such initial determination for any week with respect to which the conditions of eligibility for such credit or benefits, as prescribed by this title, are met, unless the individual is denied waiting period credit or benefits under the disqualification provisions of this title.

All benefits shall be paid through employment offices in accordance with such regulations as the commissioner may prescribe. [1945 c 35 § 85; Rem. Supp. 1945 § 9998–223. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

50.20.180 Denial of benefits. If waiting period credit or the payment of benefits shall be denied to any claimant for any week or weeks, the claimant and such other interested party as the commissioner by regulation prescribes shall be promptly issued written notice of the denial and the reasons therefor. In any case where the department is notified in accordance with such regulation as the commissioner prescribes or has reason to believe that the claimant's right to waiting period credit or benefits is in issue because of his separation from work for any reason other than lack of work, the department shall promptly issue a determination of allowance or denial of waiting period credit or benefits and the reasons therefor to the claimant, his most recent employing unit as stated by the claimant, and such other interested party as the commissioner by regulation prescribes. Notice that waiting period credit or benefits are allowed or denied shall suffice for the particular weeks stated in the notice or until the condition upon which the allowance or denial was based has been changed. [1951 c 215 § 7; 1945 c 38 § 86; Rem. Supp. 1945 § 9998–224. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

50.20.190 Recovery of benefit payments. An individual who is paid any amount as benefits under this title to which he is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, shall be deducted from any future benefits payable to the individual.

The commissioner may waive an overpayment if he finds that said overpayment was not the result of fraud, misrepresentation, wilful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: *Provided, however,* That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

Any assessment herein provided shall constitute a determination of liability from which an appeal may be

had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: *Provided,* That an appeal from any determination covering overpayment only, shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within ten days of the delivery of the notice of determination of liability, or within ten days of the mailing of the notice of determination, whichever is the earlier, said determination of liability shall be deemed conclusive and final, and the court shall, upon application of the commissioner, enter a judgment in the amount provided by the notice of determination, which judgment shall have and be given the same effect as if entered pursuant to civil action.

On request of any agency which administers an employment security law of another state, the United States or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law by reason of having knowingly made a false statement or misrepresentation of a material fact with respect to a claim taken in this state as an agent for such agency, the commissioner may collect the amount of such benefits from such claimant to be refunded to such agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection. [1973 1st ex.s. c 158 § 7; 1953 ex.s. c 8 § 14; 1951 c 215 § 8; 1947 c 215 § 18; 1945 c 35 § 87; Rem. Supp. 1947 § 9998–225. Prior: 1943 c 127 § 12; 1941 c 253 § 13; 1939 c 214 § 14; 1937 c 162 § 16.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.20.191 Authority to compromise benefit overpayments. See RCW 50.24.020.

50.20.192 Collection of benefit overpayments, limitation of actions. See RCW 50.24.190.

50.20.193 Chargeoff of uncollectible benefit overpayments. See RCW 50.24.200.

50.20.200 Nonliability of state. Benefits shall be deemed to be due and payable under this title only to the extent provided in this title and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commissioner shall be liable for any amount in

excess of such sums. [1945 c 35 § 88; Rem. Supp. 1945 § 9998-226.]

Chapter 50.22 EXTENDED BENEFITS

Sections

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| 50.22.010 | Definitions. |
| 50.22.020 | Application of title provisions and commissioner's regulations. |
| 50.22.030 | Extended benefit eligibility conditions. |
| 50.22.040 | Weekly extended benefit amount. |
| 50.22.050 | Total extended benefit amount. |
| 50.22.060 | Public announcements when extended benefit periods become effective or are terminated—Computations of rate of insured unemployment. |

50.22.010 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after whichever of the following weeks occurs first:

(i) a week for which there is a national "on" indicator, or

(ii) a week for which there is a state "on" indicator: *Provided*, That, as there was a state "on" indicator for the week which was three weeks prior to October 11, 1970, an extended benefit period began on that date.

(b) Ends with the third week after the first week for which there is both a national "off" indicator and a state "off" indicator: *Provided*, That no extended benefit period shall last for a period of less than thirteen consecutive weeks, and further that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week after the close of a prior extended benefit period which was in effect with respect to this state: *And provided further*, That prior to January 1, 1972, an extended benefit period may become effective and be terminated in this state solely by reason of a state "on" and a state "off" indicator, respectively.

(2) There is a "national 'on' indicator" for a week if the United States secretary of labor determines that for each of the three most recent calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths percent.

(3) There is a "national 'off' indicator" for a week if the United States secretary of labor determines that for each of the three most recent calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states was less than four and five-tenths percent.

(4) There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) as determined under the provisions of subsection (6) of this section:

(a) equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(b) equaled or exceeded four percent.

(5) There is a "state 'off' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) as determined under the provisions of subsection (6) of this section was either:

(a) Less than one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; or

(b) Less than four percent.

(6) "Rate of insured unemployment", for purposes of subsections (4) and (5) of this section, means the percentage derived by dividing the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the commissioner on the basis of his reports to the United States secretary of labor; by the average monthly employment covered under this title for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

(7) "Regular benefits" means benefits payable to an individual under this title or, under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits or additional benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than emergency benefits payable to an individual under the provisions of this chapter for weeks of unemployment in his eligibility period.

(9) "Additional benefits" are benefits other than regular benefits or extended benefits.

(10) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period that is in effect in this state and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(11) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were payable to him under this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week; or

(b) Has received, prior to such week, all of the regular benefits that were available to him under this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week, after the cancellation of some or all of his wage credits or the total or partial reduction of his rights to regular benefits: *Provided*, That, for the purposes of (a) and (b), an

individual shall be deemed to have received in his current benefit year all of the regular benefits that were payable to him, or available to him, as the case may be, even though (i) as a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his current benefit year, he may subsequently be determined to be entitled to more regular benefits; or (ii) by reason of the seasonal provisions of another state law, he is not entitled to regular benefits with respect to such week of unemployment (although he may be entitled to regular benefits with respect to future weeks of unemployment in the next season, as the case may be, in his current benefit year), and he is otherwise an exhaustee within the meaning of this section with respect to his right to regular benefits under such state law seasonal provisions during the season or off season in which that week of unemployment occurs; or (iii) having established a benefit year, no regular benefits are payable to him during such year because his wage credits were canceled or his right to regular benefits was totally reduced as the result of the application of a disqualification; or

(c) His benefit year having ended prior to such week, he has insufficient wages or employment, or both, on the basis of which he could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he is precluded from receiving regular benefits by reason of the provision in RCW 50.04.030 which meets the requirement of section 3304(a)(7) of the Federal Unemployment Tax Act, or the similar provision in any other state law; and

(d) (i) Has no right for such week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, and such other federal laws as are specified in regulations issued by the United States secretary of labor; and

(ii) has not received and is not seeking for such week unemployment benefits under the unemployment compensation law of the Virgin Islands or Canada, unless the appropriate agency finally determines that he is not entitled to unemployment benefits under such law for such week.

(12) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954. [1973 c 73 § 7; 1971 c 1 § 2.]

Effective date—1973 c 73: See note following RCW 50.04.030.

Emergency—**Effective date**—1971 c 1: "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on the Sunday following the day on which the governor signs this enactment." [1971 c 1 § 11.] The effective date of this act, codified as chapter 50.22 RCW, was January 17, 1971.

Repealer—**Effect as to benefits**—1971 c 1: "Section 23, chapter 2, Laws of 1970 ex.s. and RCW 50.20.127 are each hereby repealed. No benefits shall be paid pursuant to RCW 50.20.127 for weeks commencing on or after the effective date of this 1971 amendatory act." [1971 c 1 § 10.]

50.22.020 Application of title provisions and commissioner's regulations. Except when the result would be inconsistent with the other provisions of this chapter, the provisions of this title and commissioner's regulations enacted pursuant thereto, which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits. [1971 c 1 § 3.]

50.22.030 Extended benefit eligibility conditions. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the commissioner finds that with respect to such week:

(1) He is an "exhaustee" as defined in RCW 50.22.010(13); and

(2) He has satisfied the requirements of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits. [1971 c 1 § 4.]

50.22.040 Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. [1971 c 1 § 5.]

50.22.050 Total extended benefit amount. The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) Fifty percent of the total amount of regular benefits which were payable to him under this title in his applicable benefit year;

(2) Thirteen times his weekly benefit amount which was payable to him under this title for a week of total unemployment in the applicable benefit year; or

(3) Thirty-nine times his weekly benefit amount which was payable to him under this title for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid (or deemed paid) to him under this title with respect to the benefit year. [1971 c 1 § 6.]

50.22.060 Public announcements when extended benefit periods become effective or are terminated—Computations of rate of insured unemployment. (1) Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or national "on" indicator, or an extended benefit period is to be terminated in this state as a result of state and national "off" indicators or solely as a result of a state "off" indicator prior to January 1, 1972, the commissioner shall make an appropriate public announcement.

(2) Computations required by the provisions of RCW 50.22.010(6) shall be made by the commissioner, in accordance with regulations prescribed by the United States secretary of labor. [1971 c 1 § 7.]

Chapter 50.24
CONTRIBUTIONS BY EMPLOYERS

Sections

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50.24.010 Payment of contributions—Payments in lieu of contributions not remuneration. Contributions shall accrue and become payable by each employer (except employers as described in RCW 50.44.010 who have properly elected to make payments in lieu of contributions and those employers who are required to make payments in lieu of contributions) for each calendar year in which he is subject to this title at the rate of two and seven-tenths percent of wages paid each employee, except for such rates as determined for qualified employers according to chapter 50.29 RCW: *Provided*, That if, as of any June 30th, the amount in the unemployment compensation fund is less than three and one-half percent of total remuneration paid by all employers during the preceding calendar year and reported on or before the March 31st following such year, contributions for the following calendar year for all employers shall be payable at the rate of three percent of wages subject to tax.

The amount of wages subject to tax for each individual as of January 1, 1971, shall be four thousand two hundred dollars. If the amount in the unemployment compensation fund on any June 30th, after January 1, 1971, is less than four and one-half percent of total remuneration paid by all employers during the preceding calendar year and reported on or before the March 31st following such year, the amount of wages subject to tax shall increase on the January 1st next following by six hundred dollars: *Provided*, That the amount of wages subject to tax in any calendar year shall not exceed seventy-five percent of the "average annual wage" for the second preceding calendar year rounded to the next lower multiple of three hundred dollars.

In making computations under this section and RCW 50.29.010, wages paid based on services for employers making payments in lieu of contributions shall not be considered remuneration. Moneys paid from the fund,

based on services performed for employers who make payments in lieu of contributions, which have not been reimbursed to the fund as of any June 30 shall be deemed an asset of the unemployment compensation fund, to the extent that such moneys exceed the amount of payments in lieu of contributions which the commissioner has previously determined to be uncollectible: *Provided, further*, That the amount attributable to employment with the state shall also include interest as provided for in RCW 50.44.020.

Contributions shall become due and be paid by each employer to the treasurer for the unemployment compensation fund in accordance with such regulations as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in employment of the employer. Any deduction in violation of the provisions of this section shall be unlawful.

In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. [1971 c 3 § 13; 1970 ex.s. c 2 § 8; 1949 c 214 § 18; 1945 c 35 § 89; Rem. Supp. 1949 § 9998-227. Prior: 1943 c 127 § 5; 1941 c 253 § 5; 1939 c 214 § 5; 1937 c 162 § 7.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.24.015 Wages—Deemed paid when contractually due. For the purposes of liability for, collection of, and assessment of contributions, wages shall be deemed paid when such wages are contractually due but are unpaid because of the refusal or inability of the employer to make such payment. [1973 1st ex.s. c 158 § 19.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.24.020 Authority to compromise. The commissioner may compromise any claim for contributions, interest, or penalties, and any amount owed by an individual because of benefit overpayments, whether reduced to judgment or otherwise, existing or arising under this title in any case where collection of the full claim, in the case of contributions, interest, or penalties, would result in the insolvency of the employing unit or individual from whom such contributions, interest, or penalties are claimed, and any case where collection of the full amount of benefit overpayments made to an individual, whether reduced to judgment or otherwise, would be against equity and good conscience.

Whenever a compromise is made by the commissioner in the case of a claim for contributions, there shall be placed on file in the office of the unemployment compensation division a statement of the amount of contributions, interest and penalties imposed by law and claimed due, a complete record of the compromise agreement and the amount actually paid in accordance with the terms of the compromise agreement. Whenever a compromise is made by the commissioner in the case of a claim of a benefit overpayment, whether reduced to judgment or otherwise, there shall be placed on file in

the office of the unemployment compensation division a statement of the amount of the benefit overpayment, attorneys' fees and costs, if any, a complete record of the compromise agreement and the amount actually paid in accordance with the terms of the compromise agreement.

If any such compromise is accepted by the commissioner, within such time as may be stated in the compromise or agreed to, such compromise shall be final and conclusive and except upon showing of fraud or malfeasance or misrepresentation of a material fact the case shall not be reopened as to the matters agreed upon. In any suit, action, or proceeding, such agreement or any determination, collection, payment, adjustment, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded. [1955 c 286 § 5; 1945 c 35 § 90; Rem. Supp. 1945 § 9998-228.]

Effective date—1955 c 286: "The provisions of section 5 of this act shall not become effective until the 3rd day of July, 1955." [1955 c 286 § 17.] This applies to RCW 50.24.020.

50.24.030 Contributions erroneously paid to United States or another state. Payments of contributions erroneously paid to an unemployment compensation fund of another state or to the United States government which should have been paid to this state and which thereafter shall be refunded by such other state or the United States government and paid by the employer to this state, shall be deemed to have been paid to this state and to have filed contribution reports thereon at the date of payment to the United States government or such other state. [1953 ex.s. c 8 § 15; 1949 c 214 § 19; 1945 c 35 § 91; Rem. Supp. 1949 § 9998-229.]

50.24.040 Interest on delinquent contributions. If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by him. Interest shall not accrue in excess of twenty-four percent for delinquent contributions for any one contributions period. The date as of which payment of contributions, if mailed, is deemed to have been received may be determined by such regulations as the commissioner may prescribe. Interest collected pursuant to this section shall be paid into the administrative contingency fund. Interest shall not accrue on contributions from any estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by any receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer shall become due and shall draw interest in the same manner as contributions due from other employers. Where adequate information has been furnished the department and the department has failed

to act or has advised the employer of no liability or inability to decide the issue, interest may be waived. [1973 1st ex.s. c 158 § 8; 1953 ex.s. c 8 § 16; 1945 c 35 § 92; Rem. Supp. 1945 § 9998-230. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.24.050 Lien for contributions generally. The claim of the unemployment compensation division for any contributions, including interest thereon, not paid when due, shall be a lien prior to all other liens or claims and on a parity with prior tax liens against all property and rights to property, whether real or personal, belonging to the employer. In order to avail itself of the lien hereby created, the unemployment compensation division shall file with any county auditor a statement and claim of lien specifying the amount of delinquent contributions and interest claimed by the division. From the time of filing for record, the amount required to be paid shall constitute a lien upon all property and rights to property, whether real or personal, in the county, owned by the employer or acquired by him. The lien shall not be valid against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof has been filed with the county auditor. This lien shall be separate and apart from, and in addition to, any other lien or claim created by, or provided for in, this title. When any such notice of lien has been so filed, the commissioner may release the same by filing a certificate of release when it shall appear that the amount of delinquent contributions together with all interest thereon have been paid, or when such assurance of payment shall be made as the commissioner may deem to be adequate. Any lien filed as provided in this section may also be filed in the office of the secretary of state. Filing in the office of the secretary of state shall be of no effect, however, until the lien or copy thereof shall have been filed with the county auditor in the county where the property is located. When a lien is filed in compliance herewith and with the secretary of state, such filing shall have the same effect as if the lien had been duly filed for record in the office of the auditor in each county of this state. Fees for filing and releasing the lien provided herein may be charged to the employer and may be collected from the employer utilizing the remedies provided in this title for the collection of contributions. [1973 1st ex.s. c 158 § 9; 1947 c 215 § 19; 1945 c 35 § 93; Rem. Supp. 1947 § 9998-231. Prior: 1943 c 127 § 10; 1941 c 253 § 11; 1939 c 214 § 12; 1937 c 162 § 14.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.24.060 Lien in event of insolvency or dissolution. In the event of any distribution of an employer's assets pursuant to an order of any court, including any receivership, probate, legal dissolution, or similar proceeding, or in case of any assignment for the benefit of creditors, composition, or similar proceeding, contributions then or thereafter due shall be a lien upon all the assets of such employer. Said lien will be prior to all

other liens or claims except prior tax liens, other liens provided by this title, and claims for remuneration for services of not more than two hundred and fifty dollars to each claimant earned within six months of the commencement of the proceeding. The mere existence of a condition of insolvency or the institution of any judicial proceeding for legal dissolution or of any proceeding for distribution of assets shall cause such a lien to attach without action on behalf of the commissioner or the state. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as provided in that act, as amended. [1945 c 35 § 94; Rem. Supp. 1945 § 9998-232. Prior: 1943 c 127 § 10; 1941 c 253 § 11; 1939 c 214 § 12; 1937 c 162 § 14.]

50.24.070 Order and notice of assessment. At any time after the commissioner shall find that any contribution or the interest thereon has become delinquent, the commissioner may issue an order and notice of assessment specifying the amount due, which order and notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of a summons in a civil action, except that if the employer cannot be found within the state, said order and notice will be deemed to be served when mailed to the delinquent employer at his last known address by registered mail. [1945 c 35 § 95; Rem. Supp. 1945 § 9998-233. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Commencement of actions: Chapter 4.28 RCW.

50.24.080 Jeopardy assessment. If the commissioner shall have reason to believe that an employer is insolvent or if any reason exists why the collection of any contributions accrued will be jeopardized by delaying collection, he may make an immediate assessment thereof and may proceed to enforce collection immediately, but interest shall not begin to accrue upon any contributions until the date when such contributions would normally have become delinquent. [1945 c 35 § 96; Rem. Supp. 1945 § 9998-234. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.090 Distraint, seizure, and sale. If the amount of contributions or interest assessed by the commissioner by order and notice of assessment provided in this title is not paid within ten days after the service or mailing of the order and notice of assessment, the commissioner or his duly authorized representative may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of said delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state. [1945 c 35 § 97; Rem. Supp. 1945 § 9998-235. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Executions: Chapter 6.04 RCW.

Personal exemptions, generally: Chapter 6.16 RCW.

50.24.100 Distraint procedure. The commissioner, upon making a distraint, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to him, and shall specify the time and place when said property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than ten nor more than twenty days from the date of posting of such notices. Said sale may be adjourned from time to time at the discretion of the commissioner, but not for a time to exceed in all sixty days. Said sale shall be conducted by the commissioner or his authorized representative who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the commissioner or his representative may declare such property to be purchased by the employment security department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the employment security department as herein prescribed may be sold by the commissioner or his representative at public or private sale, and the amount realized shall be placed in the unemployment compensation trust fund.

In all cases of sale, as aforesaid, the commissioner shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the commissioner to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the employment security department, shall be first applied by the commissioner in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent contributions and interest the administration fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the commissioner shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the commissioner by any other taxing authority of the state or its political subdivisions. [1949 c 214 § 20; 1945 c 35 § 98; Rem. Supp. 1949 § 9998-236. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.110 Notice and order to withhold and deliver. The commissioner is hereby authorized to issue to any person, firm, corporation, political subdivision or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when he has reason to believe that there is in the possession of such person, firm, corporation, political subdivision or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom a notice

and order of assessment has been served by the employment security department of the state for unemployment compensation contributions or interest.

The notice and order to withhold and deliver shall be served by the sheriff of the county wherein the service is made, or by his deputy, or by any duly authorized representative of the commissioner. Any person, firm, corporation, political subdivision or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice.

In the event there is in the possession of any such person, firm, corporation, political subdivision or department, any property which may be subject to the claim of the employment security department of the state, such property shall be delivered forthwith to the commissioner or his duly authorized representative upon demand to be held in trust by the commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon final determination of liability.

Should any person, firm or corporation fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against such person, firm or corporation for the full amount claimed by the commissioner in the notice to withhold and deliver, together with costs. [1947 c 215 § 20; 1945 c 35 § 99; Rem. Supp. 1947 § 9998-237.]

50.24.120 Collection by civil action. (1) If after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the state, and the employer adjudged in default shall pay the cost of such action. Any lien created by this title may be foreclosed by decree of the court in any such action. Civil actions brought under this title to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this title and cases arising under the industrial insurance laws of this state.

(2) Any employing unit which is not a resident of this state and which exercises the privilege of having one or more individuals perform service for it within this state, and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any action under this title. In instituting such an action against any such employing unit the commissioner shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit, and shall be of the same force and validity as if served upon it personally within

this state: *Provided*, That the commissioner shall forthwith send notice of the service of such process or notice, together with a copy thereof, by registered mail, return receipt requested, to such employing unit at its last known address and such return receipt, the commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which such action is pending.

(3) The courts of this state shall in the manner provided in subsections (1) and (2) of this section entertain actions to collect contributions or interest thereon for which liability has accrued under the employment security law of any other state or of the federal government. [1959 c 266 § 5; 1953 ex.s. c 8 § 17; 1945 c 35 § 100; Rem. Supp. 1945 § 9998-238. Prior: 1943 c 127 § 10.]

Civil procedure: Title 4 RCW.

Industrial insurance: Title 51 RCW.

50.24.125 Collection by civil action—Collection of delinquent payments in lieu of contributions from political subdivisions or instrumentalities thereof. Delinquent payments in lieu of contributions due the unemployment compensation fund and the interest thereon may be recovered from any of the political subdivisions of this state or any instrumentality of a political subdivision of this state by civil action. The governor is authorized to deduct the amount of delinquent payments in lieu of contributions and interest thereon from any moneys payable by the state to said political subdivisions or instrumentalities and pay such moneys to the commissioner for deposit in the appropriate account. [1971 c 3 § 15.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.24.130 Contractor's and principal's liability for contributions. No employing unit which contracts with or has under it any contractor or subcontractor who is an employer under the provisions of this title shall make any payment or advance to, or secure any credit for, such contractor or subcontractor or on account of any contract or contracts to which said employing unit is a party unless such contractor or subcontractor has paid contributions, due or to become due for wages paid or to be paid by such contractor or subcontractor for personal services performed pursuant to such contract or subcontract, or has furnished a good and sufficient bond acceptable to the commissioner for payment of contributions, including interest. Failure to comply with the provisions of this section shall render said employing unit directly liable for such contributions and interest and the commissioner shall have all of the remedies of collection against said employing unit under the provisions of this title as though the services in question were performed directly for said employing unit. [1973 1st ex.s. c 158 § 10; 1949 c 214 § 21; 1945 c 35 § 101; Rem. Supp. 1949 § 9998-239.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.24.140 Collection remedies cumulative. Remedies given to the state under this title for the collection of contributions and interest shall be cumulative and no action taken by the commissioner or his duly authorized representative, the attorney general, or any other officer shall be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other. [1945 c 35 § 102; Rem. Supp. 1945 § 9998–240. Prior: 1943 c 127 § 10.]

50.24.150 Contribution adjustments and refunds. No later than three years after the date on which any contributions or interest have been paid, an employer who has paid such contributions or interest may file with the commissioner a petition in writing for an adjustment thereof in connection with subsequent contribution payments or for a refund thereof when such adjustment cannot be made. If the commissioner upon an ex parte consideration shall determine that such contributions or interest, or portion thereof, were erroneously collected, he shall allow such employer to make an adjustment thereof without interest in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the commissioner shall refund said amount without interest from the unemployment compensation fund: *Provided, however,* That after June 20, 1953, that refunds of interest on delinquent contributions shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner. For like cause and within the same period, adjustment or refund may be made on the commissioner's own initiative. If the commissioner finds that upon ex parte consideration he cannot readily determine that such adjustment or refund should be allowed, he shall deny such application and notify the employer in writing. [1953 ex.s. c 8 § 19; 1945 c 35 § 103; Rem. Supp. 1945 § 9998–241. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.160 Election of coverage. Any employing unit for which services that do not constitute employment as defined in this title are performed may file with the commissioner a written election that all such services performed by any distinct class or group of individuals or by all individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this title for not less than two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to this title from and after the date stated in such approval: *Provided, however,* That any political subdivision of this state or any instrumentality of a political subdivision may elect coverage in accordance with the provisions of RCW 50.44.030 as a matter of right. Services covered pursuant to this section shall cease to be deemed employment subject hereto as of January 1st of any calendar year subsequent to such two calendar years, only if the employing unit files with the commissioner prior to the fifteenth day of January of such year a written application for termination of coverage: *Provided, further,* That the provisions of

RCW 50.04.200 to the contrary notwithstanding, public port districts may elect to cover the services of all or any distinct class or group of individuals in its employ on a contribution basis; such election shall preclude said port districts from covering contemporaneous services of any other class or group of employees under the provisions of RCW 50.44.030. [1972 ex.s. c 35 § 1; 1971 c 3 § 14; 1959 c 266 § 6; 1951 c 265 § 8; 1951 c 215 § 9; 1945 c 35 § 104; Rem. Supp. 1945 § 9998–242.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.24.170 Joint accounts. The commissioner shall prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account. [1945 c 35 § 105; Rem. Supp. 1945 § 9998–243. Prior: 1941 c 253 § 5.]

50.24.180 Injunction proceedings. Any employer who shall be delinquent in the payment of contributions or interest may be enjoined upon the suit of the state of Washington from continuing in business in this state or employing persons herein until the delinquent contributions and interest shall have been paid, or until the employer shall have furnished a good and sufficient bond in a sum equal to double the amount of contributions and interest already delinquent, plus such further sum as the court shall deem adequate to protect the unemployment compensation division in the collection of contributions and interest which will become due from such employer during the next ensuing calendar year, said bond to be conditioned upon payment of all contributions and interest due and owing within thirty days after the expiration of the next ensuing calendar year or at such earlier date as the court may fix.

Action pursuant to the provisions of this section may be instituted in the superior court of any county of the state wherein the employer resides, has its principal place of business, or where it has anyone performing services for it, whether or not such services constitute employment. [1945 c 35 § 106; Rem. Supp. 1945 § 998–244. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.190 Limitation of actions. The commissioner shall commence action for the collection of contributions, interest, and benefit overpayments imposed by this title by assessment or suit within three years after a return is filed or notice of benefit overpayment is served. No proceedings for the collection of such amounts shall be begun after the expiration of such period.

In case of a false or fraudulent return with intent to evade contributions or interest, or in the event of a failure to file a return, the contributions and interest may be assessed or a proceeding in court for the collection

thereof may be begun at any time. [1955 c 286 § 7. Prior: 1947 c 215 § 21, part; 1945 c 35 § 107, part; 1943 c 127 § 10, part; Rem. Supp. 1947 § 9998-245, part.]

50.24.200 Chargeoff of uncollectible accounts. The commissioner may charge off as uncollectible and no longer an asset of the unemployment compensation fund or the administrative contingency fund, as the case may be, any delinquent contributions, interests, credits, or benefit overpayments at any time after three years from the date of delinquency or service of notice of benefit overpayment, if the commissioner and the attorney general are satisfied that there are no available and lawful means by which such contributions, interest, credits, or benefit overpayments may thereafter be collected. [1955 c 286 § 8. Prior: 1947 c 215 § 21, part; 1945 c 35 § 107, part; Rem. Supp. 1947 § 9998-245, part.]

Chapter 50.29

EMPLOYER EXPERIENCE RATING

Sections

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50.29.010 Definitions. As used in this chapter:

"Computation date" means July 1st of any year;

"Cut-off date" means September 30th next following the computation date;

"Rate year" means the calendar year immediately following the computation date;

"Experience rating year" is the twelve-month period beginning with July 1st of one calendar year and ending on June 30th of the following calendar year;

"Payroll" means all wages (as defined for contribution purposes) paid by an employer to individuals in his employment;

"Acquire" means the right to occupy or use the operating assets formerly in the possession of a predecessor employer whether that acquisition be by purchase, lease, gift, or by any legal process;

"Qualified employer" means: (1) Any employer as of the computation date who had some employment in the twelve-month period immediately preceding April 1st of the first of the three consecutive calendar years immediately preceding the computation date and who had no period of four or more consecutive calendar quarters in such three years for which he reported no employment, except that no employer shall be deemed a qualified employer unless all contributions required under

this title from him or his predecessors for the thirty-six month period immediately preceding the computation date have been paid by the cut-off date or within twenty days of mailing of special delinquency notice as provided in RCW 50.29.070; or (2) Any employer as of the computation date who has not been subject to this title for a period of time sufficient to be classified as a qualified employer under the provision of subdivision (1) of this paragraph but who had some employment in the twelve-month period immediately preceding April 1st of the first of the two consecutive calendar years immediately preceding the computation date and who had no period of four or more consecutive calendar quarters in such two years for which he reported no employment, except that no employer shall be deemed a qualified employer unless all contributions required under this title from him or his predecessors for the twenty-four month period immediately preceding the computation date have been paid by the cut-off date or within twenty days of mailing of special delinquency notice as provided in RCW 50.29.070: *Provided*, That for the purpose of this section, unpaid contributions of twenty-five dollars or less or unpaid contributions of one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding the computation date may be disregarded if showing is made to the satisfaction of the commissioner that an otherwise qualified employer acted in good faith and that forfeiture of qualification for a reduced contribution rate because of such delinquency would be inequitable: *Provided, further*, That when an employer or prospective employer has acquired all or substantially all of the operating assets of an employer, or has acquired an operating department, section, division, or any substantial portion of the business or assets of any employer, which is clearly segregable and identifiable for experience rating purposes, the payroll record and benefit charges of the transferring employer shall be divided between the transferring and acquiring employers in proportion to the payrolls for the four preceding completed calendar quarters attributable to the operating assets retained and conveyed. The successor employer shall be liable for contributions on the acquired business from the date the transfer of the business occurred. The separate account of a predecessor or that part thereof which is transferred shall become the separate account or part of separate account as the case may be of the successor employer.

"Surplus" is an amount of moneys in the unemployment compensation fund deemed in excess of the amount needed to insure the solvency of the fund. The "surplus" is determined in the following manner:

(1) For computations prior to January 1, 1974, the total remuneration paid during the calendar year preceding the computation date shall be multiplied by four percent and the product shall be subtracted from the amount in the fund as of the June 30th immediately preceding the computation date. If that balance is at least one-tenth of one percent of the total remuneration paid during the calendar year, that portion of the balance not exceeding forty one-hundredths of one percent of the total remuneration paid during the

preceding calendar year shall be deemed "surplus". Total remuneration paid in this computation is limited to remuneration paid during the calendar year preceding the computation date and reported to the department of employment security on or before the March 31st immediately preceding the computation date.

(2) For computations subsequent to January 1, 1974, the allowable "surplus" shall be computed by use of the following table. Column A represents the ratio of the unemployment compensation fund as of the June 30th preceding the computation date to total remuneration for the preceding calendar year. The percentage figures in Column B represent the maximum percentage of total remuneration during the preceding calendar year which may be deemed as "surplus" in view of the corresponding figures in Column A. No amount of the fund shall be declared surplus if the balance in the fund as of the June 30th immediately preceding the computation date is not at least one-tenth of one percent of total remuneration paid during the preceding calendar year in excess of four percent of total remuneration paid during the preceding calendar year. The percentage amount of total remuneration during the preceding calendar year, Column B, may be deemed surplus only to the extent that the balance remaining in the unemployment compensation fund exceeds four percent of the total remuneration paid during the preceding calendar year. Total remuneration paid in this computation is limited to remuneration paid during the calendar year preceding the computation date and reported to the department of employment security on or before the March 31st immediately preceding the computation date.

| Column A | Column B |
|-------------------------|----------|
| 4.1% but less than 4.8% | 0.40% |
| 4.8% but less than 5.2% | 0.55% |
| 5.2% or more | 0.70% |

(3) In all computations of "surplus" moneys paid from the fund, based on services performed for employers who make payments in lieu of contributions, which have not been reimbursed to the fund as of any June 30 shall be deemed an asset of the unemployment compensation fund, to the extent that such moneys exceed the amount of payments in lieu of contributions which the commissioner has previously determined to be uncollectible: *Provided, further*, That the amount attributable to employment with the state shall also include interest as provided for in RCW 50.44.020. [1973 1st ex.s. c 158 § 11; 1971 c 3 § 16; 1970 ex.s. c 2 § 10.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Construction—**Compliance with federal act**—1971 c 3: See RCW 50.44.080.

Wages defined for contribution purposes: RCW 50.04.320.

50.29.020 Experience rating accounts. An experience rating account shall be established and maintained for each employer based on existing records of the employment security department and shall be effective beginning with July 1, 1967. Benefits paid to any eligible individuals for benefit years beginning subsequent to

June 30, 1967, shall be charged to the experience rating accounts of each of his employers during his base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year; except that benefits paid to an individual under the provisions of RCW 50.12.050 shall not be charged to the account of any employer if the wage credits earned in this state by the individual during his base year are less than the minimum amount necessary to qualify the individual for unemployment benefits. [1970 ex.s. c 2 § 11.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.29.030 "Wages" defined for purpose of prorating benefit charges. For the purpose of prorating benefit charges "wages" shall mean "wages" as defined for purpose of payment of benefits in RCW 50.04.320. [1970 ex.s. c 2 § 12.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.
Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.29.040 Employer's average annual decrease quotient factor and benefit charge-back factor. For the rate year 1971 and each rate year thereafter an annual decrease quotient factor and a benefit charge-back factor shall be computed for each qualified employer, each to be determined as provided in subsections (1) and (2) hereof respectively:

(1) To determine a qualified employer's average annual decrease quotient his payroll for the three experience rating years immediately preceding the computation date shall be listed in chronological order. The first annual decrease quotient shall be obtained by dividing any decrease in his payroll between the first and second of his experience rating years by the payroll for the first of such years, the division being carried to the fourth decimal place, with the remaining fraction, if any, disregarded. The second annual decrease quotient shall be obtained by dividing any decrease in his payroll between the second and third of the listed experience rating years by the payroll for the second listed year, the division being carried to the fourth decimal place, with the remaining fraction, if any, disregarded. The employer's average annual decrease quotient shall be obtained by adding his first and second decrease quotients, if any, and dividing by two. The employer's average annual decrease quotient shall determine the point value to be assigned to such employer as his annual decrease quotient factor in accordance with the following schedule.

The annual decrease quotient of a qualified employer who has payrolls for fewer than three experience rating years shall be obtained by dividing any decrease of the employer's payroll in the experience rating year immediately preceding the computation date from the payroll in the preceding experience rating year by the amount of the payroll in such preceding experience rating year, such division being carried to the fourth decimal place, with the remaining fraction, if any, disregarded. This

annual decrease quotient shall be deemed to be his average annual decrease quotient and shall determine the point value to be assigned to such employer as his annual decrease quotient factor in accordance with the following schedule:

| Annual Decrease Quotient | Point Value |
|--------------------------|-------------|
| 0.0000-0.0124 | 10 |
| 0.0125-0.0249 | 9 |
| 0.0250-0.0374 | 8 |
| 0.0375-0.0499 | 7 |
| 0.0500-0.0749 | 6 |
| 0.0750-0.0999 | 5 |
| 0.1000-0.1499 | 4 |
| 0.1500-0.1999 | 3 |
| 0.2000-0.2499 | 2 |
| 0.2500 or more | 1 |

(2) The charge-back ratio for a qualified employer shall be the quotient obtained by dividing the total benefits charged to his account during the thirty-six consecutive month period immediately preceding the computation date by his payroll for the same thirty-six month period as reported by the cut-off date, except that the charge-back ratio of any qualified employer whose account has been chargeable for a period of fewer than thirty-six months immediately prior to the computation date shall be the quotient obtained by dividing total benefits charged to his account, prior to the computation date, by his payroll set forth as follows: The payroll shall be that reported by the cut-off date, for the period beginning with the first day of the second calendar quarter following the calendar quarter in which he became liable, and through the end of the calendar quarter immediately preceding the computation date. The charge-back ratios shall be extended to four decimal places, with the remaining fraction, if any, disregarded. The charge-back ratios so obtained shall determine the point value to be assigned each employer as his charge-back factor in accordance with the following schedule:

| Charge-back Ratios | Point Value |
|--------------------|-------------|
| Less than 0.0010 | 10 |
| 0.0010-0.0039 | 9 |
| 0.0040-0.0079 | 8 |
| 0.0080-0.0119 | 7 |
| 0.0120-0.0159 | 6 |
| 0.0160-0.0199 | 5 |
| 0.0200-0.0219 | 4 |
| 0.0220-0.0239 | 3 |
| 0.0240-0.0269 | 2 |
| 0.0270 and over | 1 |

[1973 1st ex.s. c 158 § 12; 1970 ex.s. c 2 § 13.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.29.050 Employer's rate class for contribution purposes. The annual decrease-quotient point value for each qualified employer shall be added to his charge-back point value and this sum shall designate his rate

class. For the rate year 1971 and each rate year thereafter the contribution rate for each qualified employer shall be the "class rate" determined for that class into which the employer is placed by application of this section.

(1) A "class weight" shall be assigned to each rate class as follows:

| Rate Class | Class Weight |
|------------|--------------|
| 20 | 9.0 |
| 19 | 8.5 |
| 18 | 8.0 |
| 17 | 7.5 |
| 16 | 7.0 |
| 15 | 6.5 |
| 14 | 6.0 |
| 13 | 5.5 |
| 12 | 5.0 |
| 11 | 4.5 |
| 10 | 4.0 |
| 9 | 3.5 |
| 8 | 3.0 |
| 7 | 2.5 |
| 6 | 2.0 |
| 5 | 1.5 |
| 4 | 1.0 |
| 3 | 0.5 |
| 2 | 0.0 |

(2) A "class product" for each rate class shall be obtained by dividing the total of the taxable payrolls for the experience rating year immediately preceding the computation date for all qualified employers in the rate class by the total of the taxable payrolls of all qualified employers for such experience rating year, such division being carried to the sixth decimal place with the remaining fraction, if any, disregarded, and multiplying the quotient by the class weight for that rate class.

(3) The surplus to be credited to each rate class shall be the product obtained by multiplying the surplus to be credited to all employers by the quotient of the class product for the class divided by the sum of the class products for all classes, such division being carried to the sixth decimal place with the remaining fraction, if any, disregarded. No portion of the surplus shall be credited to rate class 2.

(4) A "class credit factor" shall be obtained for each rate class by dividing the portion of the surplus assigned to the class by the sum of the payrolls of all employers in that class for the experience rating year immediately preceding the computation date; such division being carried out to the fourth decimal place and the remaining fraction, if any, disregarded.

(5) The "class rate", expressed as a percent, for each rate class shall be derived by subtracting the class credit factor for that rate class from .0270 and multiplying this result by one hundred. [1970 ex.s. c 2 § 14.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.29.060 Predecessor and successor employer contribution rates. Effective January 1, 1971, predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer at the time of the transfer, his contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(2) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(3) If the successor is not an employer at the time of the transfer, he shall pay contributions for the remainder of the rate year in which the transfer occurs at the rate assigned to the predecessor employer.

(4) If the successor is not an employer at the time of the transfer and simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, his rate from the date the transfer occurred until the end of the rate year in which such transfer occurred shall be a recomputed rate based on the combined experience of his predecessors as of the cut-off date for that rate year.

(5) In all cases, from and after January 1, following the transfer, the successor's contribution rate for each rate year shall be based on his experience with payrolls and benefits combined with the experience of his predecessor or predecessors, as of the regular computation date for that rate year.

(6) In all cases, from and after January 1 following the transfer, the predecessor's contribution rate for each rate year shall be based on his experience with payrolls and benefits, as of the regular computation date for that rate year, excluding therefrom such experience as was credited to the successor or successors under other provisions of this title: *Provided*, That if all of the predecessor's experience with payrolls and benefits is transferred to a successor or successors the predecessor shall not be a qualified employer within the meaning of RCW 50.29.010 until his account following the date of the transfer has been chargeable with benefits throughout not less than thirty-six consecutive months immediately preceding the computation date. [1973 1st ex.s. c 158 § 13; 1970 ex.s. c 2 § 15.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.29.070 Notice of employer benefit charges and rate of contribution—Request for review and redetermination—Petition for hearing upon denial—Further appeal. Within a reasonable time after the computation date, each employer shall be notified of the total amount of benefits charged to his account during the twelve-month period immediately preceding the computation date and, upon request, the amount of such charges with respect to each individual receiving unemployment benefits charged to his account.

Within a reasonable time after the computation date each employer shall be notified of his rate of contribution as determined for the succeeding rate year.

At the time of mailing rate notices any employer who, prior to the cut-off date has acquired all or substantially all of the operating assets, or has acquired an operating department, section, division, or any substantial portion of the business or assets, of any employer

who was not a qualified employer as defined in RCW 50.29.010 because of having failed to pay all contributions required under this title by the cut-off date, shall be furnished a special delinquency statement showing the amount unpaid and the rate of contribution to which such successor employer will be entitled if the amount is paid within twenty days.

Any employer dissatisfied with the benefit charges made to his account or with his determined rate may file a request for review and redetermination with the commissioner within thirty days of the mailing of the notice to the employer, showing the reason for such request. Should such request for review and redetermination be denied, the employer may, within ten days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this section. [1973 1st ex.s. c 158 § 14; 1970 ex.s. c 2 § 16.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.
Appeal on denial of refund: RCW 50.32.030, 50.32.050.

Appeal to the courts: RCW 50.32.120.

Review by commissioner: RCW 50.32.070.

50.29.080 Redetermination and correction of employer's contribution rate, when—Effect—Rights to further review and redetermination. The commissioner may redetermine any contribution rate if, within three years of the rate computation date he finds that the rate as originally computed was erroneous.

In the event that the redetermined rate is lower than that originally computed the difference between the amount paid and the amount which should have been paid on the employer's taxable payroll for the rate year involved shall be established as a credit against his tax liability; however, if the redetermined rate is higher than that originally computed the difference between the amount paid and the amount which should have been paid on the employer's taxable payroll shall be assessed against the employer as contributions owing for the rate year involved.

The redetermination of an employer's contribution rate shall not affect the contribution rates which have been established for any other employer nor shall such redetermination affect any other computation made pursuant to this title.

The employer shall have the same rights to request review and redetermination as he had from his original rate determination. [1970 ex.s. c 2 § 17.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.29.140 Experience rating credit for credit year beginning July 1, 1970, disposition. One-half the amount of experience rating credit to which an employer is determined to be entitled for the credit year beginning July 1, 1970, may be applied against contributions payable by him on wages paid in that credit year prior to January 1, 1971. The remaining half of the experience

rating credit to which he is determined to be entitled for the credit year beginning July 1, 1970, and any credits not usable because they are in excess of the contributions due on wages paid during the period beginning July 1, 1970, and ending December 31, 1970, shall be canceled. [1970 ex.s. c 2 § 18.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Chapter 50.32 REVIEW, HEARINGS AND APPEALS

Sections

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50.32.010 Appeal tribunals. The commissioner shall establish one or more impartial appeal tribunals, each of which shall consist of a salaried examiner who shall decide the issues submitted to the tribunal. No examiner shall hear or decide any disputed claim in any case in which he is an interested party. Wherever the term "appeal tribunal" or "the appeal tribunal" is used in this title the same refers to an appeal tribunal established under the provisions of this section. Notice of any appeal or petition for hearing taken to an appeal tribunal in any proceeding under this title may be filed with such agency as the commissioner may by regulation prescribe. [1945 c 35 § 117; Rem. Supp. 1945 § 9998-255. Prior: 1943 c 127 § 4; 1941 c 253 § 4.]

50.32.020 Filing of benefit appeals. The applicant or claimant, his most recent employing unit or any interested party which the commissioner by regulation prescribes, may file an appeal from any determination or redetermination with the appeal tribunal within ten days after the date of notification or mailing, whichever is earlier, of such determination or redetermination to his last known address: *Provided*, That in the event an appeal with respect to any determination is pending as of the date when a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination. Any appeal from a determination of denial of benefits which is effective for an indefinite period shall be deemed to be an appeal as to all weeks subsequent to the effective date of the denial for which benefits have already been denied. If no appeal is taken from any determination, or redetermination, within the time allowed by the provisions of this

section for appeal therefrom, said determination, or redetermination, as the case may be, shall be conclusively deemed to be correct except as hereinbefore provided in respect to reconsideration by the commissioner of any determination. [1951 c 215 § 10; 1945 c 35 § 118; Rem. Supp. 1945 § 9998-256. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

50.32.025 Mailed appeal or petition—When deemed filed. The appeal or petition from a determination, redetermination, order and notice of assessment, appeals decision, or commissioner's decision if such document be mailed, shall be deemed filed with the addressee on the postmarked date if said document is properly addressed and has sufficient postage affixed thereto. [1969 ex.s. c 200 § 1.]

50.32.030 Appeal from order and notice of assessment. When an order and notice of assessment has been served upon or mailed to a delinquent employer, as heretofore provided, such employer may within ten days thereafter file a petition in writing with the appeal tribunal, stating that such assessment is unjust or incorrect and requesting a hearing thereon. Such petition shall set forth the reasons why the assessment is objected to and the amount of contributions, if any, which said employer admits to be due the employment security department. If no such petition be filed with the appeal tribunal within said ten days, said assessment shall be conclusively deemed to be just and correct: *Provided*, That in such cases, and in cases where payment of contributions or interest has been made pursuant to a jeopardy assessment, the commissioner may properly entertain a subsequent application for refund. The filing of a petition on a disputed assessment with the appeal tribunal shall stay the distraint and sale proceeding provided for in this title until a final decision thereon shall have been made, but the filing of such petition shall not affect the right of the commissioner to perfect a lien, as provided by this title, upon the property of the employer. The filing of a petition on a disputed assessment shall stay the accrual of interest on the disputed contributions until a final decision shall have been made thereon.

Within ten days after notice of denial of refund or adjustment has been mailed or delivered (whichever is the earlier) to an employer, the employer may file a petition in writing with the appeal tribunal for a hearing thereon: *Provided*, That this right shall not apply in those cases in which assessments have been appealed from and have become final. The petitioner shall set forth the reasons why such hearing should be granted and the amount which the petitioner believes should be adjusted or refunded. If no such petition be filed within said ten days, the determination of the commissioner as stated in said notice shall be final. [1959 c 266 § 7; 1949 c 214 § 23; 1945 c 35 § 119; Rem. Supp. 1949 § 9998-257.]

50.32.040 Benefit appeals procedure. In any proceeding before an appeal tribunal involving a dispute of an individual's initial determination, all matters covered

by such initial determination shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal.

In any proceeding before an appeal tribunal involving a dispute of an individual's claim for waiting period credit or claim for benefits, all matters and provisions of this title relating to the individual's right to receive such credit or benefits for the period in question shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal.

In any proceeding before an appeal tribunal involving an individual's right to benefits, all parties shall be afforded an opportunity for hearing after not less than seven days' notice. This provision supersedes the twenty-day notice provision of RCW 34.04.090 as to such cases.

In any proceeding involving an appeal relating to benefit determinations or benefit claims, the appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall render its decision affirming, modifying, or setting aside the determination or decisions of the unemployment compensation division. The parties shall be duly notified of such appeal tribunal's decision together with its reasons therefor, which shall be deemed to be the final decision on the initial determination or the claim for waiting period credit or the claim for benefits unless, within ten days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of this title relating to review by the commissioner. [1973 c 73 § 8; 1945 c 35 § 120; Rem. Supp. 1945 § 9998-258. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Effective date—1973 c 73: See note following RCW 50.04.030.

50.32.050 Contributions appeals procedure. In any proceeding before an appeal tribunal involving an appeal from a disputed order and notice of assessment (for contributions or interest due) a disputed denial of refund or adjustment (of contributions or interest paid) or a disputed experience rating credit, the appeal tribunal, after affording the parties a reasonable opportunity for hearing, shall affirm, modify or set aside the notice of assessment, denial of refund or experience rating credit. The parties shall be duly notified of such appeal tribunal's decision together with its reasons therefor which shall be deemed to be the final decision on the order and notice of assessment, denial of refund or experience rating credit, as the case may be, unless within ten days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of this title relating to review by the commissioner. [1949 c 214 § 24; 1945 c 35 § 121; Rem. Supp. 1949 § 9998-259.]

Review by commissioner: RCW 50.32.070.

50.32.060 Conduct of appeal hearings. The manner in which any dispute shall be presented to the appeal tribunal, and the conduct of hearings and appeals, shall be in accordance with regulations prescribed by the commissioner for determining the rights of the parties,

whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all appeal tribunal proceedings. All testimony at any appeal tribunal hearing shall be recorded, but need not be transcribed unless further appeal is taken. [1945 c 35 § 122; Rem. Supp. 1945 § 9998-260.]

50.32.070 Petition for review by commissioner. Within ten days from the date of notification or mailing, whichever is the earlier, *of any decision of an appeal tribunal, the commissioner on his own order may, or upon petition of any interested party shall, take jurisdiction of the proceedings for the purpose of review thereof. Appeal from any decision of an appeal tribunal may be perfected so as to prevent finality of such decision if, within ten days from the date of mailing the appeal tribunal decision, or notification thereof, whichever is the earlier, a petition in writing for review by the commissioner is received by the commissioner or by such representative of the commissioner as the commissioner by regulation shall prescribe. The commissioner may also prevent finality of any decision of an appeal tribunal and take jurisdiction of the proceedings for his review thereof by entering an order so providing on his own motion and mailing a copy thereof to the interested parties within the same period allowed herein for receipt of a petition for review. The time limit provided herein for seeking review by the commissioner and for the commissioner's assumption of jurisdiction on his own motion for review shall be deemed to be jurisdictional. [1947 c 215 § 31; 1945 c 35 § 123; Rem. Supp. 1947 § 9998-261.]

***Reviser's note:** The word "of" substituted for "or" to correct manifest clerical error.

50.32.080 Commissioner's review procedure. After having acquired jurisdiction for review, the commissioner shall review the proceedings in question. Prior to rendering his decision, the commissioner may order the taking of additional evidence by an appeal tribunal to be made a part of the record in the case. Upon the basis of evidence submitted to the appeal tribunal and such additional evidence as the commissioner may order to be taken, the commissioner shall render his decision in writing affirming, modifying, or setting aside the decision of the appeal tribunal and shall mail his decision to the interested parties at their last known addresses. [1945 c 35 § 124; Rem. Supp. 1945 § 9998-262.]

50.32.090 Finality of commissioner's decision. Any decision of the commissioner involving a review of an appeal tribunal decision, in the absence of a petition therefrom as provided in RCW 34.04.130, shall become final thirty days after service. The commissioner shall be deemed to be a party to any judicial action involving any such decision and shall be represented in any such judicial action by the attorney general. [1973 1st ex.s. c 158 § 15; 1945 c 35 § 125; Rem. Supp. 1945 § 9998-263.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Procedure for judicial review: RCW 50.32.120.

50.32.100 Costs. In all proceedings provided by this title prior to court review involving dispute of an individual's initial determination, or claim for waiting period credit, or for benefits, the fees of all witnesses attending such proceedings pursuant to subpoena shall be paid at the rate fixed by such regulation as the commissioner shall prescribe and such fees and all costs of such proceedings otherwise chargeable to such individual, except charges for services rendered by counsel or other agent representing such individual, shall be paid out of the unemployment compensation administration fund. In all other respects and in all other proceedings under this title the rule in civil cases as to costs and attorney fees shall apply: *Provided*, That cost bills may be served and filed and costs shall be taxed in accordance with such regulation as the commissioner shall prescribe. [1945 c 35 § 126; Rem. Supp. 1945 § 9998-264.]

Costs and attorneys' fees: Chapter 4.84 RCW.

Costs on appeal: RCW 4.88.260; Rules of court: ROA I-55; CAROA 55.

50.32.110 Fees for administrative hearings. No individual shall be charged fees of any kind in any proceeding involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits, under this title by the commissioner or his representatives, or by an appeal tribunal, or any court, or any officer thereof. Any individual in any such proceeding before the commissioner or any appeal tribunal may be represented by counsel or other duly authorized agent who shall neither charge nor receive a fee for such services in excess of an amount found reasonable by the officer conducting such proceeding. [1945 c 35 § 127; Rem. Supp. 1945 § 9998-265.]

50.32.120 Procedure for judicial review. Judicial review of a decision of the commissioner involving the review of an appeals tribunal decision may be had only in accordance with the procedural requirements of RCW 34.04.130. [1973 1st ex.s. c 158 § 16; 1971 c 81 § 119; 1945 c 35 § 128; Rem. Supp. 1945 § 9998-266. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Appeal to supreme court: Rules of court: ROA; CAROA.

Appeals: Chapter 4.88 RCW.

50.32.130 Undertakings on seeking judicial review. No bond of any kind shall be required of any individual seeking judicial review from a commissioner's decision affecting such individual's application for initial determination or claim for waiting period credit or for benefits.

No commissioner's decision shall be stayed by a petition for judicial review unless the petitioning employer shall first deposit an undertaking in an amount theretofore deemed by the commissioner to be due, if any, from the petitioning employer, together with interest

thereon, if any, with the commissioner or in the registry of the court: *Provided, however*, That this section shall not be deemed to authorize a stay in the payment of benefits to an individual when such individual has been held entitled thereto by a decision of the commissioner which decision either affirms, reverses, or modifies a decision of an appeals tribunal. [1973 1st ex.s. c 158 § 17; 1971 c 81 § 120; 1945 c 35 § 129; Rem. Supp. 1945 § 9998-267. Prior: 1943 c 127 § 4; 1941 c 253 § 4.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Bonds on appeal: Rules of court: ROA I-22 through I-31; CAROA 22-31.

50.32.140 Interstate petitions to Thurston county. RCW 34.04.130 to the contrary notwithstanding, petitions to the superior court from decisions of the commissioner dealing with the applications or claims relating to benefit payments which were filed outside of this state with an authorized representative of the commissioner shall be filed with the superior court of Thurston county which shall have the original venue of such appeals. [1973 1st ex.s. c 158 § 18; 1945 c 35 § 130; Rem. Supp. 1945 § 9998-268.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.32.150 Jurisdiction of the courts. In all court proceedings under or pursuant to this title the decision of the commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

If the court shall determine that the commissioner has acted within his power and has correctly construed the law, the decision of the commissioner shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the commissioner with an order directing him to proceed in accordance with the findings of the court.

Whenever any order and notice of assessment shall have become final in accordance with the provisions of this title, the court shall upon application of the commissioner enter a judgment in the amount provided for in said order and notice of assessment, and said judgment shall have and be given the same effect as if entered pursuant to civil action instituted in said court. [1945 c 35 § 131; Rem. Supp. 1945 § 9998-269. Prior: 1941 c 253 § 4.]

Judgments, entry of: Chapter 4.64 RCW.

Judgments, generally: Chapter 4.56 RCW.

50.32.160 Attorneys' fees in courts. It shall be unlawful for any attorney engaged in any appeal to the courts on behalf of an individual involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits to charge or receive any fee therein in excess of a reasonable fee to be fixed by the superior court in respect to the services performed in connection with the appeal taken thereto and to be fixed by the supreme court or the court of

appeals in the event of an appeal thereto, and if the decision of the commissioner shall be reversed or modified, such fee and the costs shall be payable out of the unemployment compensation administration fund. In the allowance of fees the court shall give consideration to the provisions of this title in respect to fees pertaining to proceedings involving an individual's application for initial determination, claim for waiting period credit, or claim for benefits. In other respects the practice in civil cases shall apply. [1971 c 81 § 121; 1945 c 35 § 132; Rem. Supp. 1945 § 9998-270. Prior: 1941 c 253 § 4.]

Attorneys' fees: Chapter 4.84 RCW.

Costs: RCW 50.32.100.

Costs on appeal: Chapter 4.84 RCW, RCW 4.88.260; Rules of court: ROA I-55; CAROA 55.

50.32.170 Decisions final by agreement. No appeal from the decision of an appeal tribunal, or of the commissioner, or of any court in any proceedings provided by this title may be taken subsequent to the filing with the appeal tribunal, commissioner, or court which rendered the decision, within the time allowed for appeal, of an agreement in writing approved by all interested parties to the proceedings, providing that no appeal will be taken from such decision. The provisions of this section shall be jurisdictional. [1945 c 35 § 133; Rem. Supp. 1945 § 9998-271.]

50.32.180 Remedies of title exclusive. The remedies provided in this title for determining the justness or correctness of assessments, refunds, adjustments, or claims shall be exclusive and no court shall entertain any action to enjoin an assessment or require a refund or adjustment except in accordance with the provisions of this title. Matters which may be determined by the procedures set out in this title shall not be the subject of any declaratory judgment. [1945 c 35 § 134; Rem. Supp. 1945 § 9998-272.]

50.32.190 Costs, charges, and expenses. Whenever any appeal is taken from any decision of the commissioner to any court, all expenses and costs incurred therein by said commissioner, including court reporter costs and attorneys' fees and all costs taxed against such commissioner, shall be paid out of the unemployment compensation administration fund.

Neither the commissioner nor the state shall be charged any fee for any service rendered in connection with litigation under the unemployment compensation act by the clerk of any court. [1945 c 35 § 135; Rem. Supp. 1945 § 9998-273.]

Chapter 50.36 PENALTIES

Sections

- 50.36.010 Violations generally.
- 50.36.020 Violations by employers.
- 50.36.030 Concealing cause of discharge.

Law against discrimination: Chapter 49.60 RCW.

50.36.010 Violations generally. It shall be unlawful for any person to knowingly give any false information or withhold any material information required under the provisions of this title. Any person who violates any of the provisions of this title which violation is declared to be unlawful, and for which no contrary provision is made, shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days: *Provided*, That any person who violates the provisions of RCW 50.40.010 shall be guilty of a gross misdemeanor.

Any person who in connection with any compromise or offer of compromise wilfully conceals from any officer or employee of the state any property belonging to an employing unit which is liable for contributions, interest, or penalties, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement relating to the financial condition of the employing unit which is liable for contributions, shall upon conviction thereof be fined not more than five thousand dollars or be imprisoned for not more than one year, or both.

The penalty prescribed in this section shall not be deemed exclusive, but any act which shall constitute a crime under any law of this state may be the basis of prosecution under such law notwithstanding that it may also be the basis for prosecution under this section. [1953 ex.s. c 8 § 22; 1945 c 35 § 180; Rem. Supp. 1945 § 9998-319. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

Crimes and punishment: Title 9 RCW.

50.36.020 Violations by employers. Any person required under this title to collect, account for and pay over any contributions imposed by this title, who wilfully fails to collect or truthfully account for and pay over such contributions, and any person who wilfully attempts in any manner to evade or defeat any contributions imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than five thousand dollars, or imprisoned for not more than one year, or both, together with the costs of prosecution.

The term "person" as used in this section includes an officer or individual in the employment of a corporation, or a member or individual in the employment of a partnership, who as such officer, individual or member is under a duty to perform the act in respect of which the violation occurs. A corporation may likewise be prosecuted under this section and may be subjected to fine and payment of costs of prosecution as prescribed herein for a person. [1953 ex.s. c 8 § 23; 1945 c 35 § 181; Rem. Supp. 1945 § 9998-320. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

Crimes and punishment: Title 9 RCW.

50.36.030 Concealing cause of discharge. Employing units or agents thereof supplying information to the employment security department pertaining to the cause of a benefit claimant's separation from work,

which cause stated to the department is contrary to that given the benefit claimant by such employing unit or agent thereof at the time of his separation from the employing unit's employ, shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days. [1951 c 265 § 13.]

Chapter 50.40 MISCELLANEOUS PROVISIONS

Sections

50.40.010 Waiver of rights void.
50.40.020 Exemption of benefits.
50.40.040 No vested rights.

50.40.010 Waiver of rights void. Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this title shall be void. Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this title from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from remuneration for services to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. [1945 c 35 § 182; Rem. Supp. 1945 § 9998-321. Prior: 1943 c 127 § 11; 1941 c 253 § 12; 1939 c 214 § 13; 1937 c 162 § 15.]

50.40.020 Exemption of benefits. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this title shall be void. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debts. Benefits received by any individual, so long as they are not commingled with other funds of the recipient, shall be exempt from any remedy whatsoever for collection of all debts except debts incurred for necessities furnished such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void. [1945 c 35 § 183; Rem. Supp. 1945 § 9998-322. Prior: 1943 c 127 § 11; 1941 c 253 § 12; 1939 c 214 § 13; 1937 c 162 § 15. Formerly codified in RCW 50.40-.020, part and 50.40.030, part.]

50.40.040 No vested rights. The legislature reserves the right to amend or repeal all or any part of this title at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this title or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this title at any time. [1945 c 35 § 187; no RRS. Prior: 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Chapter 50.44 SPECIAL COVERAGE PROVISIONS

Sections

50.44.010 Religious, charitable, educational or other nonprofit organizations—Exemption—Payments.
50.44.020 State and its wholly owned instrumentalities—Exclusions—Payments.
50.44.030 Political subdivisions of state or instrumentalities thereof—Application—"Hospital" and "institution of higher education" defined—Payments—Termination of coverage.
50.44.040 Services excluded under "employment" as used in RCW 50.44.010, 50.44.020 and 50.44.030.
50.44.050 Benefits payable, terms and conditions.
50.44.060 Financing benefits paid employees of nonprofit organizations—Election to make payments in lieu of contributions.
50.44.070 Surety bond or deposit of money or securities when election to make payments in lieu of contributions.
50.44.080 Construction—Compliance with federal act—1971 c 3.

50.44.010 Religious, charitable, educational or other nonprofit organizations—Exemption—Payments. Services performed subsequent to December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization which is excluded from the term "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of that act shall be deemed services performed in employment unless such service is exempted under RCW 50.44.040.

Such organization shall make payments to the unemployment compensation fund based on such services in accordance with the provisions of RCW 50.44.060. [1971 c 3 § 18.]

50.44.020 State and its wholly owned instrumentalities—Exclusions—Payments. Commencing with benefit years beginning on or after January 28, 1971, services performed subsequent to September 30, 1969 in the employ of this state or any of its wholly owned instrumentalities shall be deemed services in employment unless such services are excluded from the term employment by RCW 50.44.040.

The state shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in subsections (2) and (3) of RCW 50.44-.060: *Provided, however,* That no payment will be required from the state until the expiration of the twelve-month period following the end of the biennium in which the benefits attributable to such employment were paid. The amount of this payment shall include an amount equal to the amount of interest that would have been realized for the benefit of the unemployment compensation trust fund had such payments been received within thirty days after the day of the quarterly billing provided for in RCW 50.44.060(2)(a). [1971 c 3 § 19.]

50.44.030 Political subdivisions of state or instrumentalities thereof—Application—"Hospital" and "institution of higher education" defined—Payments—Termination of coverage. Any political subdivision of this state or any instrumentality of a political subdivision may elect to cover the services of all or any

distinct class or group of individuals in its employ; *Provided, however*, That public utility districts and public power authorities may not elect coverage under this section: *Provided, further*, That any political subdivision of this state or any instrumentality of a political subdivision which elects to cover the services of any employees in an institution of higher education or hospital operated by said political subdivision or instrumentality shall cover the services of all employees in all institutions of higher education and all hospitals operated by said political subdivision or instrumentality.

For the purposes of this chapter the term "hospital" means any institution primarily engaged in the treatment of emotional or physical disability which provides, on a regular basis, twenty-four hour per day bed care under the supervision of licensed medical personnel and those components, of other institutions, which are primarily engaged in the treatment of emotional or physical disability and which provide, on a regular basis, twenty-four hour per day bed care under the supervision of licensed medical personnel.

For the purposes of this chapter, the term "institution of higher education" means an educational institution in this state which

- (1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;
- (2) Is legally authorized within this state to provide a program of education beyond high school;
- (3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and
- (4) Is a public or other nonprofit institution;
- (5) Notwithstanding any of the foregoing subsections, all colleges and universities in this state are "institutions of higher education".

Services covered by the election performed subsequent to the date of such election shall be deemed services in employment unless such services are excluded from the term "employment" by RCW 50.44.040.

Any political subdivision or instrumentality electing coverage under this section shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in subsections (2) and (3) of RCW 50.44.060.

An election under the provisions of this section shall be for no less than two calendar years. A political subdivision or instrumentality of a political subdivision desiring to terminate coverage may do so by filing a written application for termination of coverage no later than the December fifteenth preceding the calendar year with respect to which such termination is to be effective. Termination of coverage will not relieve the political subdivision or instrumentality of a political subdivision of the obligation to reimburse the unemployment compensation fund for all benefits paid attributable to service performed during the covered

period in the employ of such political subdivision or instrumentality of a political subdivision. [1972 ex.s. c 35 § 2; 1971 c 3 § 20.]

50.44.040 Services excluded under "employment" as used in RCW 50.44.010, 50.44.020 and 50.44.030. The term "employment" as used in RCW 50.44.010, 50.44.020 and 50.44.030 shall not include service performed:

- (1) In the employ of (a) a church or convention or association of churches, or (b) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or
- (2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or
- (3) In the employ of a nongovernmental educational institution, approved or accredited by the state board of education, which is not an "institution of higher education"; or
- (4) In a facility conducted for the purpose of carrying out a program of (a) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or (b) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or
- (5) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work-relief or work-training; or
- (6) For a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution; or
- (7) In the employ of a hospital, if such service is performed by a patient of such hospital; or
- (8) In the employ of a school, college, or university, if such service is performed (a) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (b) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (ii) such employment will not be covered by any program of unemployment insurance; or
- (9) By an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer,

except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(10) In the employ of the state or one of its instrumentalities or a political subdivision or one of its instrumentalities by an individual who is (a) occupying an elective office, or (b) who is compensated solely on a fee or per diem basis. [1973 c 73 § 9; 1971 c 3 § 21.]

Effective date—1973 c 73: See note following RCW 50.04.030.

50.44.050 Benefits payable, terms and conditions. Benefits based on services in employment covered by or pursuant to this chapter shall be payable on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this title: *Provided, however,* That benefits based on service in an instructional, research or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for an institution or institutions of higher education for both such academic years or both such terms: *Provided, further,* That benefits based on service in an instructional, research, or principal administrative capacity in an educational institution other than an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity in an educational institution or institutions other than an institution of higher education for both such academic years or both such terms: *Provided, further,* That any employee of a common school district who is conclusively presumed to have been re-employed pursuant to RCW 28A.67.070 shall be deemed to have a contract for the ensuing term. [1973 c 73 § 10; 1971 c 3 § 22.]

Effective date—1973 c 73: See note following RCW 50.04.030.

50.44.060 Financing benefits paid employees of nonprofit organizations—Election to make payments in lieu of contributions. Benefits paid to employees of "nonprofit organizations" shall be financed in accordance with the provisions of this section. For the purpose of this section and RCW 50.44.070, the term "nonprofit organization" is limited to those organizations described in RCW 50.44.010, and joint accounts composed exclusively of such organizations.

(1) Any nonprofit organization which is, or becomes subject to this title on or after January 1, 1972 shall pay contributions under the provisions of RCW 50.24.010, unless it elects, in accordance with this subsection, to

pay to the commissioner for the unemployment compensation fund an amount equal to the full amount of regular and additional benefits and one-half of the amount of extended benefits paid to individuals for weeks of unemployment which begin during the effective period of such election to the extent that such payments are attributable to service in the employ of such nonprofit organization.

(a) Any nonprofit organization which is, or becomes, subject to this title on January 1, 1972 may elect to become liable for payments in lieu of contributions for a period of not less than one taxable year beginning with January 1, 1972: *Provided,* That it files with the commissioner a written notice of its election within the thirty-day period immediately following such date.

(b) Any nonprofit organization which becomes subject to this title after January 1, 1972 may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(c) Any nonprofit organization which makes an election in accordance with paragraphs (a) or (b) of this subsection will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(d) Any nonprofit organization which has been paying contributions under this title for a period subsequent to January 1, 1972 may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(e) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(f) The commissioner, in accordance with such regulations as he may prescribe, shall notify each nonprofit organization of any determination which he may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Any nonprofit organization subject to such determination and dissatisfied with such determination may file a request for review and redetermination with the commissioner within thirty days of the mailing of the determination to the organization. Should such request for review and redetermination be denied, the organization may, within ten days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this paragraph.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this section including either paragraph (a) or (b) of this subsection.

(a) At the end of each calendar quarter, the commissioner shall bill each nonprofit organization or group of such organizations which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular and additional benefits plus one-half of the amount of extended benefits paid during such quarter that is attributable to service in the employ of such organization.

(b) (i) Each nonprofit organization that has elected payments in lieu of contributions may request permission to make such payments as provided in this paragraph. Such method of payment shall become effective upon approval by the commissioner.

(ii) At the end of each calendar quarter, or at the end of such other period as determined by the commissioner, the commissioner shall bill each nonprofit organization for an amount representing one of the following:

(A) For 1972, six-tenths of one percent of its total payroll for 1971.

(B) For years after 1972, such percentage of its total payroll for the immediately preceding calendar year as the commissioner shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year.

(C) For any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the commissioner shall determine.

(iii) At the end of each taxable year, the commissioner may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(iv) At the end of each taxable year, the commissioner shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular and additional benefits plus one-half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with paragraph (c). If the total payments exceed the amount so determined for the taxable year, all of the excess payments will be retained in the fund as part of the payments which may be required for the next taxable year, or a part of the excess may, at the discretion of the commissioner, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

(c) Payment of any bill rendered under paragraph (a) or (b) shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, and if not paid within such thirty days, the reimbursement payments itemized in the bill shall be deemed to be delinquent and the whole or part thereof remaining

unpaid shall bear interest from and after the end of such thirty days at the rate and in the manner set forth in RCW 50.24.040.

(d) Payments made by any nonprofit organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization. Any deduction in violation of the provisions of this paragraph shall be unlawful.

(3) Each employer that is liable for payments in lieu of contributions shall pay to the commissioner for the fund the total amount of regular and additional benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount [payable] to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of paragraph (a) or (b) of this subsection.

(a) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(b) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(4) Notwithstanding any other provisions in this section, any nonprofit organization which prior to January 1, 1969, paid contributions into the unemployment compensation fund, and pursuant to this section, elects, within thirty days after January 1, 1972 to make payments in lieu of contributions, shall not be required to make any such payment on account of any regular, additional, or extended benefits paid, on the basis of wages paid by such organization to individuals for weeks of unemployment which begin on or after the effective date of such election until the total amount of such benefits equals the amount of the positive balance in the experience rating account of such organization. [1971 c 3 § 23.]

50.44.070 Surety bond or deposit of money or securities when election to make payments in lieu of contributions. In the discretion of the commissioner, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election,

to execute and file with the commissioner a surety bond approved by the commissioner or it may elect instead to deposit with the commissioner money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this section.

(1) The amount of the bond or deposit required by this subsection shall be an amount deemed by the commissioner to be sufficient to cover any reimbursement payments which may be required from the employer attributable to employment during any year for which the election is in effect but in no event shall such amount be in excess of the amount which said employer would pay for such year if he were subject to the contribution provisions of this title. The determination made pursuant to this subsection shall be based on payroll information, employment experience, and such other factors as the commissioner deems pertinent.

(2) Any bond deposited under this section shall be in force for a period of not less than two taxable years and shall be renewed with the approval of the commissioner, at such times as the commissioner may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The commissioner shall require adjustments to be made in a previously filed bond as he deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in this title, shall render the surety liable on said bond to the extent of the bond, as though the surety was such organization.

(3) Any deposit of money or securities in accordance with this section shall be retained by the commissioner in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The commissioner may deduct from the money deposited under this section by a nonprofit organization or sell the securities it has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in this act. The commissioner shall require the organization within thirty days following any deduction from a money deposit or sale of deposited securities under the provisions of this subsection to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The commissioner may, at any time review the adequacy of the deposit made by any organization. If, as a result of such review, he determines that an adjustment is necessary he shall require the organization to make an additional deposit within thirty days of written notice of his determination or shall return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate. Disposition of income from securities held

in escrow shall be governed by the applicable provisions of the state law.

(4) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this section, the commissioner may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which termination becomes effective: *Provided*, That the commissioner may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty days. [1973 c 73 § 11; 1971 c 3 § 24.]

Effective date—1973 c 73: See note following RCW 50.04.030.

50.44.080 Construction—Compliance with federal act—1971 c 3. RCW 50.44.010 through 50.44.070 have been enacted to meet the requirements imposed by the federal unemployment tax act as amended by 91-373. Internal references in any section of *this 1971 amendatory act to the provisions of that act are intended only to apply to those provisions as they existed as of January 28, 1971.

In view of the importance of compliance of *this 1971 amendatory act with the federal unemployment tax act, any ambiguities contained herein should be resolved in a manner consistent with the provisions of that act. Considerable weight has been given to the commentary contained in that document entitled "Draft Legislation to Implement the Employment Security Amendments of 1970 . . . H.R. 14705", published by the United States Department of Labor, Manpower Administration, and that commentary should be referred to when interpreting the provisions of *this 1971 amendatory act.

Language in *this 1971 amendatory act concerning the extension of coverage to employers entitled to make payments in lieu of contributions should, in a manner consistent with the foregoing paragraph, be construed so as to have a minimum financial impact on the employers subject to the experience rating provisions of this title. [1971 c 3 § 25.]

***Reviser's note:** Phrase "this 1971 amendatory act" applies to RCW 50.04.070, 50.04.072, 50.04.073, 50.04.080, 50.04.110, 50.04.115, 50.04.116, 50.04.200, 50.04.295, 50.04.300, 50.12.050, 50.20.043, 50.24.010, 50.24.125, 50.24.160 and 50.29.010 and chapter 50.44 RCW, and to the repeal of RCW 50.04.190.

**Chapter 50.98
CONSTRUCTION**

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| Sections | |
| 50.98.010 | Saving clause—1945 c 35. |
| 50.98.020 | Appointments and regulations continued. |
| 50.98.030 | Actions commenced under prior laws. |
| 50.98.040 | Acts repealed. |
| 50.98.050 | Conflicting acts repealed. |
| 50.98.060 | Repealed acts not reenacted. |
| 50.98.070 | Separability of provisions—1945 c 35. |
| 50.98.080 | Effective date—1945 c 35. |

50.98.010 Saving clause—1945 c 35. If any provisions of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby. [1945 c 35 § 184; no RRS.]

50.98.020 Appointments and regulations continued. The repeal of any acts or parts of acts by this act shall not affect the appointment or employment of any individual or salary, wages, compensation, powers or duties relating to such individual which would continue in effect except for such repeal. Rules and regulations adopted pursuant to the provisions of any acts or parts of acts repealed by this act consistent with the provisions of this act are not affected by such repeal and are hereby continued in full force and effect. [1945 c 35 § 185; no RRS.]

50.98.030 Actions commenced under prior laws. Any action or proceeding had or commenced in any civil or criminal cause prior to the effective date of this act may be prosecuted and continued with the same effect and under the same provisions of the law in effect at the time the action or proceeding was had or commenced: *Provided*, That no appeal taken subsequent to the effective date of this act will be effective or valid unless there is compliance with the requirements of this act relating to appeals. [1945 c 35 § 186; no RRS.]

50.98.040 Acts repealed. The following acts and parts of acts relating to unemployment compensation are hereby repealed: Chapter 162, Session Laws of 1937; chapter 12, Session Laws of 1939; chapter 214, Session Laws of 1939; section 6 of chapter 201, Session Laws of 1941; chapter 253, Session Laws of 1941; chapter 65, Session Laws of 1943; chapter 127, Session Laws of 1943; chapter 226, Session Laws of 1943. [1945 c 35 § 188; no RRS.]

50.98.050 Conflicting acts repealed. All acts or parts of acts in conflict with or in derogation of this act or any part of this act are hereby repealed insofar as the same are in conflict with or in derogation of this act or any part thereof. [1945 c 35 § 189; no RRS.]

50.98.060 Repealed acts not reenacted. The repeal of any acts or parts of acts hereby shall not be construed to reenact or revive any act or parts of acts repealed or superseded by the acts or parts of acts hereby repealed. [1945 c 35 § 190; no RRS.]

50.98.070 Separability of provisions—1945 c 35. If any section, sentence, clause or phrase of this act should be held to be invalid or unconstitutional the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this act. [1945 c 35 § 191; no RRS.]

Severability—1951 c 265: "If any section, sentence, clause or word of this act shall be held unconstitutional, the invalidity of such section, sentence, clause or word shall not affect the validity of any other portion of this act, it being the intent of this legislative assembly

to enact the remainder of this act notwithstanding such part so declared unconstitutional should or may be so declared." [1951 c 265 § 14.]

50.98.080 Effective date—1945 c 35. An emergency exists and this act is necessary for the preservation of the public peace, health, safety, and welfare and shall take effect on the first day of July, 1945. [1945 c 35 § 192; no RRS.]

TITLE 51

INDUSTRIAL INSURANCE

Chapters

- 51.04 General provisions.
- 51.08 Definitions.
- 51.12 Employments and occupations covered.
- 51.14 Self-insurers.
- 51.16 Assessment and collection of premiums—Payrolls and records.
- 51.24 Actions at law for injury or death.
- 51.28 Notice and report of accident—Application for compensation.
- 51.32 Compensation—Right to and amount.
- 51.36 Medical aid.
- 51.40 Medical aid contracts.
- 51.44 Funds.
- 51.48 Penalties.
- 51.52 Appeals.
- 51.98 Construction.

Autopsies in industrial deaths: RCW 68.08.103.

Civil defense workers, compensation for: Chapter 38.52 RCW.

Coal mining code: Title 78.40 RCW.

Constitutional protection of employees: State Constitution Art. 2 § 35.

Department of labor and industries: Chapter 43.22 RCW.

Ferry system employees in extrahazardous employment: RCW 47.64.070.

Fisheries department, peace officers, compensation and medical aid: RCW 75.08.206.

Health and safety in factories, mills, workshops: Chapter 49.20 RCW.

Health and safety, underground workers: Chapter 49.24 RCW.

Labor regulations, generally: Title 49 RCW.

Lien of employees for contributions to benefit plans: Chapter 60.76 RCW.

Occupational and environmental research facility at University of Washington: RCW 28B.20.450–28B.20.458.

Payments from accident fund and medical aid fund for occupational and environmental research facility at University of Washington: RCW 28B.20.458.

Safety council: Chapter 43.60 RCW.

Safety, extrahazardous employment: Chapter 49.16 RCW.

Schools and colleges, employee insurance programs: RCW 28B.10.220.

Supervisor of industrial insurance: RCW 43.22.020.

Trusts, duration for employees benefits: Chapter 49.64 RCW.

Unemployment compensation: Title 50 RCW.

Victims of crimes, rights to benefits: Chapter 7.68 RCW.

Chapter 51.04 GENERAL PROVISIONS

Sections

- 51.04.010 Declaration of police power—Jurisdiction of courts abolished.
- 51.04.020 Departmental functions, generally.

- 51.04.030 Departmental medical aid function—Duties of director or self-insurer to keep records, pay medical bills.
- 51.04.040 Attendance of witnesses by compulsion.
- 51.04.050 Testimony of physicians not privileged.
- 51.04.060 No evasion of benefits or burdens.
- 51.04.070 Minor workman is sui juris—Guardianship expense.
- 51.04.080 Sending notices, orders, warrants to claimants.
- 51.04.090 Effect of adjudication of applicability.
- 51.04.100 Statutes of limitation saved.
- 51.04.110 Workmen's compensation advisory committee—Members, terms, compensation—Duties—Expenses—Study.

Public assistance recipient receiving industrial insurance compensation, recovery by department: RCW 74.04.530–74.04.580.

51.04.010 Declaration of police power—Jurisdiction of courts abolished. The common law system governing the remedy of workmen against employers for injuries received in employment is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage worker. The state of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in their work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this title; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this title provided. [1972 ex.s. c 43 § 1; 1961 c 23 § 51.04.010. Prior: 1911 c 74 § 1; RRS § 7673.]

51.04.020 Departmental functions, generally. The director shall:

- (1) Establish and promulgate rules governing the administration of this title;
- (2) Ascertain and establish the amounts to be paid into and out of the accident fund;
- (3) Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency;

(4) Supervise the medical, surgical, and hospital treatment to the intent that it may be in all cases efficient and up to the recognized standard of modern surgery;

(5) Issue proper receipts for moneys received and certificates for benefits accrued or accruing;

(6) Investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department;

(7) Create a division of statistics within which shall be compiled such statistics as will afford reliable information upon which to base operations of all divisions under the department;

(8) Make annual report to the governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the department, and showing the financial status and the outstanding obligations of the accident fund and the statistics aforesaid;

(9) Be empowered to enter into agreements with the appropriate agencies of other states relating to conflicts of jurisdiction where the contract of employment is in one state and injuries are received in the other state, and insofar as permitted by the Constitution and laws of the United States, to enter into similar agreements with the provinces of Canada. [1963 c 29 § 1; 1961 c 23 § 51.04.020. Prior: 1957 c 70 § 3; prior: (i) 1921 c 182 § 9; 1911 c 74 § 24; RRS § 7703. (ii) 1947 c 247 § 1, part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

Severability—1963 c 29: "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 29 § 2.] This applies to RCW 51.04.020.

Assignment of wage claims: RCW 49.48.040.

Electricians, installations: Chapters 19.28, 19.29 RCW.

Farm labor contractors: Chapter 19.30 RCW.

Health and safety, factories, mills, underground workers, etc.: Chapters 49.20, 49.24 RCW.

Minimum wage act: Chapter 49.46 RCW.

Safety, extrahazardous employment: Chapter 49.16 RCW.

Seasonal labor disputes: Chapter 49.40 RCW.

51.04.030 Departmental medical aid function—Duties of director or self-insurer to keep records, pay medical bills. The director shall, through the division of industrial insurance, supervise the providing of prompt and efficient care and treatment to workmen injured in during the course of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and promulgate and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment.

The director shall make and, from time to time, change as may be, and promulgate a fee bill of the maximum charges to be made by any physician, surgeon, hospital, druggist, or other agency or person

rendering services to injured workmen. No service covered under this title shall be charged or paid at a rate or rates exceeding those specified in such fee bill, and no contract providing for greater fees shall be valid as to the excess.

The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured workmen, shall approve and pay those which conform to the promulgated rules, regulations, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules and regulations promulgated under it. [1971 ex.s. c 289 § 74; 1961 c 23 § 51.04.030. Prior: (i) 1917 c 28 § 6; RRS § 7715. (ii) 1919 c 129 § 3; 1917 c 29 § 7; RRS § 7716. (iii) 1923 c 136 § 10; RRS § 7719.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Saving—1923 c 136: "For all cases of injuries to workmen which occurred and for all claims or actions pending or causes of action existing before this act shall go into effect, Sections 7673 to 7796 of Remington's Compiled Statutes of Washington shall continue in force as they were prior to and they shall be unaffected by the passage of this amendatory act." [1923 c 136 § 20; RRS § 7786-1.]

Severability—1923 c 136: "Adjudication of invalidity of any of the sections of this act, or any part of any section shall not impair or otherwise affect the validity of any other of said sections or part thereof." [1923 c 136 § 21; RRS § 7795-1.]

Repeal and saving—1923 c 136: "Sections 7677, 7678, 7691, 7721, 7722, 7750, 7753, 7776, 7777, 7778, 7779, 7785 and 7787 of Remington's Compiled Statutes of Washington, and all acts and parts of acts in conflict with the provisions hereof, are hereby repealed, but nothing herein contained shall operate to repeal any part of the Coal Mining Code or any of the following sections of Remington's Compiled Statutes of Washington, or any part thereof: 7642 to 7660, inclusive, 9843 to 9870, inclusive, and 10339 and 10459, inclusive." [1923 c 136 § 22; RRS § 7796-1.]

Effective date—1923 c 136: "This act shall take effect on the 1st day of July, 1923, with the exception of sections 7676, 7712, and 7713, which take effect on the 1st day of September, 1923." [1923 c 136 § 23; RRS § 7796-2.]

The foregoing annotations apply to RCW 49.16.090, 49.16.120, 49.16.150, 51.04.030, 51.04.080, 51.08.150, 51.08.160, 51.12.050, 51.12.070, 51.12.110, 51.16.010, 51.16.140, 51.16.150, 51.32.010, 51.32.020, 51.32.040-51.32.060, 51.32.080-51.32.100, 51.32.140, 51.36.010-51.36.030, 51.40.070, 51.44.020 and 51.52.050.

51.04.040 Attendance of witnesses by compulsion. The superior court shall have power to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records before the department. [1961 c 23 § 51.04.040. Prior: 1915 c 188 § 7; RRS § 7699.]

51.04.050 Testimony of physicians not privileged. In all hearings, actions or proceedings before the department or the board of industrial insurance appeals, or before any court on appeal from the board, any physician having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of physician to patient. [1961 c 23 § 51.04.050. Prior: 1915 c 188 § 4; RRS § 7687.]

51.04.060 No evasion of benefits or burdens. No employer or workman shall exempt himself from the burden or waive the benefits of this title by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void. [1961 c 23 § 51.04.060. Prior: 1911 c 74 § 11; RRS § 7685.]

51.04.070 Minor workman is sui juris—Guardianship expense. A minor working at an age legally permitted under the laws of this state shall be deemed sui juris for the purpose of this title, and no other person shall have any cause of action or right to compensation for an injury to such minor workman, except as expressly provided in this title, but in the event of a lump sum payment becoming due under this title to such minor workman, the management of the sum shall be within the probate jurisdiction of the courts the same as other property of minors and, in the event it is necessary to procure the appointment of a guardian to receive the money to which any minor workman is entitled under the provisions of this title, the director may allow from the accident fund toward the expenses of such guardianship, not to exceed the sum of fifty dollars in any one case: *Provided*, That in case any such minor is awarded a lump sum payment of not more than seven hundred fifty dollars, the director may make payment direct to such minor without the necessity of the appointment of a guardian. [1961 c 23 § 51.04.070. Prior: 1959 c 308 § 1; 1957 c 70 § 4; prior: 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part.]

51.04.080 Sending notices, orders, warrants to claimants. On all claims under this title, claimants' written notices, orders, or warrants shall not be forwarded to, or in care of, any representative of the claimant, but shall be forwarded directly to the claimant until such time as there has been entered an order on the claim appealable to the board of industrial insurance appeals. [1972 ex.s. c 43 § 2; 1961 c 23 § 51.04.080. Prior: 1959 c 308 § 2; 1957 c 70 § 5; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Saving—Severability—Repeal and saving—Effective date— 1923 c 136: See notes following RCW 51.04.030.

51.04.090 Effect of adjudication of applicability. If any employer shall be adjudicated to be outside the lawful scope of this title, the title shall not apply to him or his workman, or if any workman shall be adjudicated to be outside the lawful scope of this title because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this title in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions for the creation of the accident fund, or the provisions of this title making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman shall be held invalid the entire title

shall be thereby invalidated. In other respects an adjudication of invalidity of any part of this title shall not affect the validity of the title as a whole or any other part thereof. [1961 c 23 § 51.04.090. Prior: 1911 c 74 § 27; RRS § 7706.]

51.04.100 Statutes of limitation saved. If the provisions of this title relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this title by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: *Provided*, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by this title, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed. [1961 c 23 § 51.04.100. Prior: 1911 c 74 § 28; RRS § 7707.]

51.04.110 Workmen's compensation advisory committee—Members, terms, compensation—Duties—Expenses—Study. The director shall appoint a workmen's compensation advisory committee composed of nine members: Three representing subject workmen, three representing subject employers, and three ex officio members, without a vote, one of whom represents the department, who shall be chairman, one of whom represents self-insurers, and one of whom represents employees of self-insurers. This committee shall conduct a continuing study of any aspects of workmen's compensation as the committee shall determine require their consideration. The committee shall report its findings to the department or the board of industrial insurance appeals for such action as deemed appropriate. The members of the committee shall be appointed for a term of three years commencing on July 1, 1971 and the terms of the members representing the workmen and employers shall be staggered so that the director shall designate one member from each such group initially appointed whose term shall expire on June 30, 1972 and one member from each such group whose term shall expire on June 30, 1973. The members shall serve without compensation, but shall be entitled to expenses as provided in RCW 43.03.050 and 43.03.060. The committee may hire such experts, if any, as it shall require to discharge its duties, and may utilize such personnel and facilities of the department and board of industrial insurance appeals as it shall need without charge. All expenses of this committee shall be paid by the department.

The workmen's compensation advisory committee created by this section shall conduct a study of the advisability and necessity of deposits by self-insurers into the reserve fund to guarantee the payments of pensions established pursuant to this title, and shall report its findings and recommendations on this study to the department, and the department shall transmit said findings and recommendations to the next regular session of the legislature. [1972 ex.s. c 43 § 37; 1971 ex.s. c 289 § 67.]

Chapter 51.08 DEFINITIONS

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51.08.010 Meaning of words. Unless the context indicates otherwise, words used in this title shall have the meaning given in this chapter. [1961 c 23 § 51.08.010. Prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.012 "Accredited school". For the purposes of RCW 51.08.030 and 51.32.005, "accredited school" means a school or course of instruction which is:

(1) Approved by the state superintendent of public instruction, the state board of education, the state board for community college education, or the state division of vocational education of the coordinating council for occupational education; or

(2) Regulated or licensed as to course content by any agency of the state or under any occupational licensing act of the state, or recognized by the apprenticeship council under an agreement registered with the apprenticeship council pursuant to chapter 49.04 RCW. [1969 ex.s. c 77 § 3.]

51.08.013 "Acting in the course of employment". "Acting in the course of employment" means the workman acting at his employer's direction or in the furtherance of his employer's business which shall include

time spent going to and from work on the jobsite, as defined in RCW 51.32.015 and 51.36.040, insofar as such time is immediate to the actual time that the workman is engaged in the work process in areas controlled by his employer, except parking areas, and it is not necessary that at the time an injury is sustained by a workman he be doing the work on which his compensation is based or that the event be within the time limits on which industrial insurance or medical aid premiums or assessments are paid. [1961 c 107 § 3.]

51.08.014 "Agriculture". "Agriculture" means the business of growing or producing any agricultural or horticultural produce or crop, including the raising of any animal, bird, or insect, or the milk, eggs, wool, fur, meat, honey, or other substances obtained therefrom. [1971 ex.s. c 289 § 75.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.015 "Amount", "payment", "premium", "contribution", "assessment". Wherever and whenever in any of the provisions of this title relating to any payments by an employer or workman the words "amount" and/or "amounts," "payment" and/or "payments," "premium" and/or "premiums," "contribution" and/or "contributions", and "assessment" and/or "assessments" appear said words shall be construed to mean taxes, which are the money payments by an employer or workman which are required by this title to be made to the state treasury for the accident fund, the medical aid fund, the supplemental pension fund, or any other fund created by this title. [1972 ex.s. c 43 § 3; 1961 c 23 § 51.08.015. Prior: 1959 c 308 § 25.]

51.08.018 "Average monthly wage". For purposes of *this 1971 amendatory act, the average monthly wage in the state shall be the average annual wage as determined under RCW 50.04.355 divided by twelve. [1971 ex.s. c 289 § 15.]

***Reviser's note:** "this 1971 amendatory act" [1971 ex.s. c 289] refers to RCW 38.52.290, 38.52.330, 51.04.030, 51.04.110, 51.08.014, 51.08.018, 51.08.070, 51.08.173, 51.08.175, 51.08.178, 51.12.010, 51.12.020, 51.12.070, 51.12.110, 51.12.120, 51.14.010–51.14.110, 51.16.035, 51.16.040, 51.16.042, 51.16.060, 51.16.105, 51.16.110, 51.16.140, 51.16.155, 51.16.160, 51.16.180, 51.24.010, 51.28.010, 51.28.020, 51.28.025, 51.28.030, 51.32.010, 51.32.015, 51.32.020, 51.32.040, 51.32.050, 51.32.055, 51.32.060, 51.32.070, 51.32.073, 51.32.080, 51.32.090, 51.32.095, 51.32.100, 51.32.110, 51.32.140, 51.32.180, 51.32.190, 51.32.200, 51.36.010, 51.36.020, 51.36.050, 51.36.060, 51.36.070, 51.36.080, 51.44.033, 51.44.034, 51.44.070, 51.44.080, 51.44.140, 51.44.150, 51.44.160, 51.48.010, 51.48.015, 51.48.017, 51.48.020, 51.48.030, 51.48.060, 51.48.110, 51.52.010, 51.52.080, 51.52.090, 51.52.104, 51.52.106, 51.52.110, 51.98.060, 51.98.070, and 75.08.206; and to the repeal of RCW 51.16.010, 51.16.020, 51.16.030 and 51.16.080.

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.020 "Beneficiary". "Beneficiary" means a husband, wife, child, or dependent of a workman in whom shall vest a right to receive payment under this title: *Provided*, That a husband or wife of an injured workman, living separate and apart in a state of abandonment, regardless of the party responsible therefor, for

more than one year at the time of the injury or subsequently, shall not be a beneficiary. A spouse who has lived separate and apart from the other spouse for the period of two years and who has not, during that time, received, or attempted by process of law to collect, funds for maintenance, shall be deemed living in a state of abandonment. [1973 1st ex.s. c 154 § 91; 1961 c 23 § 51.08.020. Prior: 1957 c 70 § 6; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

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

51.08.030 "Child". "Child" means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, dependent child in the legal custody and control of the claimant, and illegitimate child legitimated prior to the injury, all while under the age of eighteen years, or under the age of twenty-one years while permanently enrolled at a full time course in an accredited school, and over the age of eighteen years if the child is a dependent invalid child. [1972 ex.s. c 65 § 1; 1969 ex.s. c 77 § 1; 1961 c 23 § 51.08.030. Prior: 1957 c 70 § 7; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1941 c 209 § 3, part; Rem. Supp. 1941 § 7679, part.]

51.08.040 "Department". "Department" means department of labor and industries. [1961 c 23 § 51.08.040.]

51.08.050 "Dependent". "Dependent" means any of the following named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower, or child, viz: father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half-sister, half-brother, niece, nephew, who at the time of the accident are actually and necessarily dependent in whole or in part for their support upon the earnings of the workman: *Provided*, That unless otherwise provided by treaty, aliens other than father or mother, not residing within the United States at the time of the accident, are not included. [1961 c 23 § 51.08.050. Prior: 1957 c 70 § 8; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.060 "Director". "Director" means the director of labor and industries. [1961 c 23 § 51.08.060.]

51.08.070 "Employer". "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while

engaged in this state in any work covered by the provisions of this title, by way of trade or business, or who contracts with one or more workmen, the essence of which is the personal labor of such workman or workmen. [1971 ex.s. c 289 § 1; 1961 c 23 § 51.08.070. Prior: 1957 c 70 § 9; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—**Severability**—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.100 "Injury". "Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom. [1961 c 23 § 51.08.100. Prior: 1959 c 308 § 3; 1957 c 70 § 12; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.110 "Invalid". "Invalid" means one who is physically or mentally incapacitated from earning. [1961 c 23 § 51.08.110. Prior: 1957 c 70 § 13; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.140 "Occupational disease". "Occupational disease" means such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title. [1961 c 23 § 51.08.140. Prior: 1959 c 308 § 4; 1957 c 70 § 16; prior: 1951 c 236 § 1; 1941 c 235 § 1, part; 1939 c 135 § 1, part; 1937 c 212 § 1, part; Rem. Supp. 1941 § 7679-1, part.]

51.08.150 "Permanent partial disability". "Permanent partial disability" means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments were severed where repair is not complete, or any other injury known in surgery to be permanent partial disability. [1961 c 23 § 51.08.150. Prior: 1957 c 70 § 17; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Saving—**Severability**—**Repeal and saving**—**Effective date**—1923 c 136: See notes following RCW 51.04.030.

51.08.160 "Permanent total disability". "Permanent total disability" means loss of both legs, or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation. [1961 c 23 § 51.08.160. Prior: 1957 c 70 § 18; prior:

1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.08.173 "Self-insurer". "Self-insurer" means an employer who has been authorized under this title to carry its own liability to its employees covered by this title. [1971 ex.s. c 289 § 80.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.175 "State fund". Whenever the term "state fund" is used in the provisions of *this 1971 amendatory act, it shall mean those funds held by the state or any agency thereof for the purposes of this title. The director shall manage the state fund and shall have such powers as are necessary to carry out its functions and may reinsure any risk insured by the state fund. [1972 ex.s. c 43 § 5; 1971 ex.s. c 289 § 88.]

***Reviser's note:** "this 1971 amendatory act", see note following RCW 51.08.018.

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.178 "Wages"—Monthly wages as basis of compensation—Computation thereof. (1) For the purposes of this title, the monthly wages the workman was receiving from all employment at the time of injury shall be the basis upon which compensation is computed unless otherwise provided specifically in the statute concerned. In cases where the workman's wages are not fixed by the month, they shall be determined by multiplying the daily wage the workman was receiving at the time of the injury:

(a) By five, if the workman was normally employed one day a week;

(b) By nine, if the workman was normally employed two days a week;

(c) By thirteen, if the workman was normally employed three days a week;

(d) By eighteen, if the workman was normally employed four days a week;

(e) By twenty-two, if the workman was normally employed five days a week;

(f) By thirty, if the workman was normally employed seven days a week.

The term "wages" shall include the reasonable value of board, housing, fuel, or other consideration of like nature received from the employer, but shall not include overtime pay, tips, or gratuities. The daily wage shall be eight times the hourly wage unless the workman is normally employed for less than eight hours.

(2) In cases where a wage has not been fixed or cannot be reasonable and fairly be determined, the monthly wage shall be computed on the basis of the usual wage paid other employees engaged in like or similar occupations where the wages are fixed. [1971 ex.s. c 289 § 14.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.180 "Workman". "Workman" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his employment. [1961 c 23 § 51.08.180. Prior: 1957 c 70 § 21; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1937 c 211 § 2; RRS § 7674-1.]

51.08.185 "Employee". "Employee" shall have the same meaning as "workman" when the context would so indicate, and shall include all officers of the state, state agencies, counties, municipal corporations, or other public corporations, or political subdivisions. [1972 ex.s. c 43 § 4.]

Chapter 51.12

EMPLOYMENTS AND OCCUPATIONS COVERED

Sections

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| 51.12.035 | Volunteers, inclusion for medical aid benefit purposes—"Volunteer" defined. |
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Ferry system employees: RCW 47.64.070.

Health and safety in factories, mills, underground workers, etc.: Chapters 49.20, 49.24 RCW.

Safety and extrahazardous employment: Chapter 49.16 RCW.

51.12.010 Employments included—Declaration of policy. There is a hazard in all employment and it is the purpose of this title to embrace all employments which are within the legislative jurisdiction of the state.

This title shall be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment. [1972 ex.s. c 43 § 6; 1971 ex.s. c 289 § 2; 1961 c 23 § 51.12.010. Prior: 1959 c 55 § 1; 1955 c 74 § 2; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1923 c 128 § 1, part; RRS § 7674a, part.]

51.12.020 Employments excluded. The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, repair, remodeling, or similar work in or about the private home of the employer which does not exceed ten consecutive work days.

(3) A person whose work is casual and the employment is not in the course of the trade, business, or profession of his employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors and partners.

(6) Any employee, not regularly and continuously employed by the employer in agricultural labor, whose cash remuneration paid by or due from any one employer in that calendar year for agricultural labor is less than one hundred fifty dollars. Employees not regularly and continuously employed in agricultural labor by any one employer but who are employed in agricultural labor on a seasonal basis shall come under the coverage of this title only when their cash remuneration paid or due in that calendar year exceeds one hundred fifty dollars but only as of the occurrence of that event and only as to their work for that employer.

(7) Any child under eighteen years of age employed by his parent or parents in agricultural activities on the family farm. [1973 c 124 § 1; 1972 ex.s. c 43 § 7; 1971 ex.s. c 289 § 3; 1961 c 23 § 51.12.020. Prior: 1955 c 74 § 3; prior: 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part.]

51.12.035 Volunteers, inclusion for medical aid benefit purposes—"Volunteer" defined. Volunteers shall be deemed employees and/or workmen, as the case may be, for all purposes relating to medical aid benefits under Title 51 RCW.

A "volunteer" shall mean a person who performs any assigned or authorized duties for the state, except emergency services workers as described by chapter 38.52 RCW, brought about by one's own free choice, receives no salary, and is registered as a volunteer with a state agency or organization for the purpose of engaging in authorized volunteer service: *Provided*, That said person may be granted maintenance and reimbursement for actual expenses necessarily incurred in performing his assigned or authorized duties. [1974 1st ex.s. c 171 § 44; 1971 c 20 § 1.]

51.12.050 State, county and municipal work—Liability for premiums. Whenever the state, county, any municipal corporation, or other taxing district shall engage in any work, or let a contract therefor, in which

workmen are employed for wages, this title shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the state, county, municipality, or other taxing district. If the work is being done by contract, the payroll of the contractor and the subcontractor shall be the basis of computation and, in the case of contract work consuming less than one year in performance, the required payment into the accident fund shall be based upon the total payroll. The contractor and any subcontractor shall be subject to the provisions of this title, and the state for its general fund, the county, municipal corporation, or other taxing district shall be entitled to collect from the contractor the full amount payable to the accident fund and the contractor, in turn, shall be entitled to collect from the subcontractor his proportionate amount of the payment.

Whenever and so long as, by state law, city charter, or municipal ordinance, provision is made for employees or peace officers injured in the course of employment, such employees shall not be entitled to the benefits of this title and shall not be included in the payroll of the municipality under this title: *Provided*, That whenever any state law, city charter, or municipal ordinance only provides for payment to the employee of the difference between his actual wages and that received under this title such employees shall be entitled to the benefits of this title and may be included in the payroll of the municipality. [1972 ex.s. c 43 § 8; 1961 c 23 § 51.12.050. Prior: 1955 c 74 § 6; prior: (i) 1923 c 136 § 5, part; 1921 c 182 § 8, part; 1915 c 188 § 6, part; 1911 c 74 § 17, part; RRS § 7692, part. (ii) 1923 c 128 § 1, part; RRS § 7674a, part.]

~~Saving—Severability—Repeal and saving—Effective date—~~
1923 c 136: See notes following RCW 51.04.030.

51.12.060 Federal projects. The application of this title and related safety laws is hereby extended to all lands and premises owned or held by the United States of America, by deed or act of cession, by purchase or otherwise, which are within the exterior boundaries of the state of Washington, and to all projects, buildings, constructions, improvements, and property belonging to the United States of America, which are within the exterior boundaries of the state, in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the state, and as fully as is permitted under the provisions of that act of the congress of the United States approved June 25, 1936, granting to the several states jurisdiction and authority to apply their state workmen's compensation laws on all property and premises belonging to the United States of America, being 49 United States Statutes at large 1938, title 40, section 290 United States code, 1958 edition: *Provided*, That this title shall not apply to employees of the United States of America. [1961 c 23 § 51.12.060. Prior: 1937 c 147 § 1; RRS § 7676-2.]

51.12.070 Work done by contract—Liability for premiums. The provisions of this title shall apply to all work done by contract; the person, firm, or corporation who lets a contract for such work shall be responsible

primarily and directly for all premiums upon the work. The contractor and any subcontractor shall be subject to the provisions of this title and the person, firm, or corporation letting the contract shall be entitled to collect from the contractor the full amount payable in premiums and the contractor in turn shall be entitled to collect from the subcontractor his proportionate amount of the payment.

It shall be unlawful for any county, city or town to issue a construction building permit to any person who has not submitted to the department an estimate of payroll and paid premium thereon as provided by chapter 51.16 RCW of this title or proof that such person has qualified as a self-insurer. [1971 ex.s. c 289 § 81; 1965 ex.s. c 20 § 1; 1961 c 23 § 51.12.070. Prior: 1955 c 74 § 7; prior: 1923 c 136 § 5, part; 1921 c 182 § 8, part; 1915 c 188 § 6, part; 1911 c 74 § 17, part; RRS § 7692, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.12.080 Interstate, foreign and intrastate railway employees. Inasmuch as it has proved impossible in the case of employees of common carriers by railroad, engaged in maintenance and operation of railways doing interstate, foreign and intrastate commerce, and in maintenance and construction of their equipment, to separate and distinguish the connection of such employees with interstate or foreign commerce from their connection with intrastate commerce, and such employees have, in fact, received no compensation under this title, the provisions of this title shall not apply to work performed by such employees in the maintenance and operation of such railroads or performed in the maintenance or construction of their equipment, or to the employees of such common carriers by railroad engaged therein, but nothing herein shall be construed as excluding from the operation of this title railroad construction work, or the employees engaged thereon: *Provided*, That common carriers by railroad engaged in such interstate or foreign commerce and in intrastate commerce shall, in all cases where liability does not exist under the laws of the United States, be liable in damages to any person suffering injury while employed by such carrier, or in case of the death of such employee, to the surviving spouse and child, or children, and if no surviving spouse or child or children, then to the parents, minor sisters, or minor brothers, residents of the United States at the time of such death, and who were dependent upon such deceased for support, to the same extent and subject to the same limitations as the liability now existing, or hereafter created, by the laws of the United States governing recoveries by railroad employees injured while engaged in interstate commerce: *Provided further*, That if any interstate common carrier by railroad shall also be engaged in one or more intrastate enterprises or industries (including street railways and power plants) other than its railroad, the foregoing provisions of this section shall not exclude from the operation of the other sections of this title or

bring under the foregoing proviso of this section any work of such other enterprise or industry, the payroll of which may be clearly separable and distinguishable from the payroll of the maintenance or operation of such railroad, or of the maintenance or construction of its equipment: *Provided further*, That nothing in this section shall be construed as relieving an independent contractor engaged through or by his employees in performing work for a common carrier by railroad, from the duty of complying with the terms of this title, nor as depriving any employee of such independent contractor of the benefits of this title. [1973 1st ex.s. c 154 § 92; 1972 ex.s. c 43 § 9; 1961 c 23 § 51.12.080. Prior: 1925 ex.s. c 84 § 1; 1919 c 67 § 1; 1917 c 29 § 19; 1911 c 74 § 18; RRS § 7693.]

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

51.12.090 Intrastate and interstate commerce. The provisions of this title shall apply to employers and workmen (other than railways and their workmen) engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability or method of compensation now exists under or may hereafter be established by the congress of the United States, only to the extent that the payroll of such workmen may and shall be clearly separable and distinguishable from the payroll of workmen engaged in interstate or foreign commerce: *Provided*, That as to workmen whose payroll is not so clearly separable and distinguishable the employer shall in all cases be liable in damages for injuries to the same extent and under the same circumstances as is specified in the case of railroads in the first proviso of RCW 51.12.080: *Provided further*, That nothing in this title shall be construed to exclude goods or materials and/or workmen brought into this state for the purpose of engaging in work. [1972 ex.s. c 43 § 10; 1961 c 23 § 51.12.090. Prior: 1959 c 308 § 10; 1919 c 67 § 3; RRS § 7695.]

51.12.100 Maritime occupations—Segregation of payrolls—Common enterprise. The provisions of this title shall apply to all employers and workmen, except a master or member of a crew of any vessel, engaged in maritime occupations for whom no right or obligation exists under the maritime laws for personal injuries or death of such workmen.

If an accurate segregation of payrolls of workmen engaged in maritime occupations and working part time on shore and part time off shore cannot be made by the employer, the director is hereby authorized and directed to fix from time to time a basis for the appropriate [approximate] segregation of the payrolls of employees to cover the shore part of their work, and the employer, if not a self-insurer, shall pay premiums on that basis for the time such workmen are engaged in their work.

Where two or more employers are simultaneously engaged in a common enterprise at one and the same site or place in maritime occupations under circumstances in which no right or obligation exists under the maritime laws for personal injuries or death of such workmen, such site or place shall be deemed for the

purposes of this title to be the common plant of such employers. [1972 ex.s. c 43 § 11; 1961 c 23 § 51.12.100. Prior: 1931 c 79 § 1; 1925 ex.s. c 111 § 1; RRS § 7693a.]

Ferry system employees in extrahazardous employment: RCW 47.64.070.

51.12.110 Elective adoption—Withdrawal. Any employer who has in his employment any exempt person may file notice in writing with the director of his election to be subject to this title, and shall forthwith display in a conspicuous manner about his works and in a sufficient number of places to reasonably inform his workmen of the fact, printed notices furnished by the department stating that he has so elected and stating when said election will become effective. Any workman in the employ of such applicant shall be entitled at any time within five days after the posting of said notice by his employer, or within five days after he has been employed by an employer who has elected to become subject to this title as herein provided, to give a written notice to such employer and to the department of his election not to become subject to this title. At the expiration of the time fixed by the notice of the employer, the employer and such of his workmen as shall not have given such written notice of their election to the contrary shall be subject to all the provisions of this title and entitled to all of the benefits thereof: *Provided*, That those who have heretofore complied with the foregoing conditions and are carried and considered by the department as within the purview of this title shall be deemed and considered as having fully complied with its terms and shall be continued by the department as entitled to all of the benefits and subject to all of the liabilities without other or further action. Any employer who has complied with this section may withdraw his acceptance of liability under this title by filing written notice with the director of the withdrawal of his acceptance. Such withdrawal shall become effective thirty days after the filing of such notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The employer shall, at least thirty days before the effective date of the withdrawal, post reasonable notice of such withdrawal where the affected workman or workmen work and shall otherwise notify personally the affected workmen. Withdrawal of acceptance of this title shall not affect the liability of the department or self-insurer for compensation for any injury occurring during the period of acceptance. [1971 ex.s. c 289 § 85; 1961 c 23 § 51.12.110. Prior: 1959 c 308 § 11; 1929 c 132 § 5; 1923 c 136 § 6; 1911 c 74 § 19; RRS § 7696.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.12.120 Extra territorial coverage—Injuries incurred outside state—Injuries incurred in employ of nondomiciled employer—Conflicts of jurisdiction—Agreements. (1) If a workman, while working outside the territorial limits of this state, suffers an injury on account of which he, or his beneficiaries, would have

been entitled to compensation under this title had such injury occurred within this state, such workman, or his beneficiaries, shall be entitled to compensation under this title: *Provided*, That if at the time of such injury:

(a) His employment is principally localized in this state; or

(b) He is working under a contract of hire made in this state for employment not principally localized in any state; or

(c) He is working under a contract of hire made in this state for employment principally localized in another state whose workmen's compensation law is not applicable to his employer; or

(d) He is working under a contract of hire made in this state for employment outside the United States and Canada.

(2) The payment or award of compensation under the workmen's compensation law of another state, territory, province, or foreign nation to a workman or his beneficiaries otherwise entitled on account of such injury to compensation under this title shall not be a bar to a claim for compensation under this title: *Provided*, That claim under this title is timely filed. If compensation is paid or awarded under this title, the total amount of compensation paid or awarded the workman or beneficiary under such other workmen's compensation law shall be credited against the compensation due the workman or beneficiary under this title.

(3) If a workman or beneficiary is entitled to compensation under this title by reason of an injury sustained in this state while in the employ of an employer who is domiciled in another state and who has neither opened an account with the department nor qualified as a self-insurer under this title, such an employer or his insurance carrier shall file with the director a certificate issued by the agency which administers the workmen's compensation law in the state of the employer's domicile, certifying that such employer has secured the payment of compensation under the workmen's compensation law of such other state and that with respect to said injury such workman or beneficiary is entitled to the benefits provided under such law. In such event:

(a) The filing of such certificate shall constitute appointment by the employer or his insurance carrier of the director as its agent for acceptance of the service of process in any proceeding brought by any claimant to enforce rights under this title;

(b) The director shall send to such employer or his insurance carrier, by registered or certified mail to the address shown on such certificate, a true copy of any notice of claim or other process served on the director by the claimant in any proceeding brought to enforce rights under this title;

(c) (i) If such employer is a self-insurer under the workmen's compensation law of such other state, such employer shall, upon submission of evidence or security, satisfactory to the director, of his ability to meet his liability to such claimant under this title, be deemed to be a qualified self-insurer under this title;

(ii) If such employer's liability under the workmen's compensation law of such other state is insured, such

employer's carrier, as to such claimant only, shall be deemed to be subject to this title: *Provided*, That unless its contract with said employer requires it to pay an amount equivalent to the compensation benefits provided by this title, the insurer's liability for compensation shall not exceed its liability under the workmen's compensation law of such other state;

(d) If the total amount for which such employer's insurer is liable under (c)(ii) above is less than the total of the compensation to which such claimant is entitled under this title, the director may require the employer to file security satisfactory to the director to secure the payment of compensation under this title; and

(e) If such employer has neither qualified as a self-insurer nor secured insurance coverage under the workmen's compensation law of another state, such claimant shall be paid compensation by the department;

(f) Any such employer shall have the same rights and obligations as other employers subject to this title and where he has not provided coverage or sufficient coverage to secure the compensation provided by this title to such claimant, the director may impose a penalty payable to the department of a sum not to exceed fifty percent of the cost to the department of any deficiency between the compensation provided by this title and that afforded such claimant by such employer or his insurance carrier if any.

(4) As used in this section:

(a) A person's employment is principally localized in this or another state when (i) his employer has a place of business in this or such other state and he regularly works at or from such place of business, or (ii) if clause (i) foregoing is not applicable, he is domiciled in and spends a substantial part of his working time in the service of his employer in this or such other state;

(b) "Workmen's compensation law" includes "occupational disease law" for the purposes of this section.

(5) A workman whose duties require him to travel regularly in the service of his employer in this and one or more other states may agree in writing with his employer that his employment is principally localized in this or another state, and, unless such other state refuses jurisdiction, such agreement shall govern as to any injury occurring after the effective date of the agreement.

(6) The director shall be authorized to enter into agreements with the appropriate agencies of other states and provinces of Canada which administer their workmen's compensation law with respect to conflicts of jurisdiction and the assumption of jurisdiction in cases where the contract of employment arises in one state or province and the injury occurs in another, and when any such agreement has been executed and promulgated as a regulation of the department under chapter 34.04 RCW, it shall bind all employers and workmen subject to this title and the jurisdiction of this title shall be governed by this regulation. [1972 ex.s. c 43 § 12; 1971 ex.s. c 289 § 82.]

51.12.130 Registered apprentices or trainees. (1) All persons registered as apprentices or trainees with the state apprenticeship council and participating in supplemental and related instruction classes conducted by

a school district, a community college, a vocational school, or a local joint apprenticeship committee, shall be considered as workmen of the state apprenticeship council and subject to the provisions of Title 51 RCW, for the time spent in actual attendance at such supplemental and related instruction classes.

(2) The assumed wage rate for all apprentices or trainees during the hours they are participating in supplemental and related instruction classes, shall be three dollars per hour. This amount shall be used for purposes of computations of premiums, and for purposes of computations of disability compensation payments.

(3) Only those apprentices or trainees who are registered with the state apprenticeship council prior to their injury or death and who incur such injury or death while participating in supplemental and related instruction classes shall be entitled to benefits under the provisions of Title 51 RCW.

(4) The filing of claims for benefits under the authority of this section shall be the exclusive remedy of apprentices or trainees and their beneficiaries for injuries or death compensable under the provisions of Title 51 RCW against the state, its political subdivisions, the school district, community college, or vocational school and their members, officers or employees or any employer regardless of negligence.

(5) This section shall not apply to any apprentice or trainee who has earned wages for the time spent in participating in supplemental and related instruction classes. [1973 c 110 § 1.]

Chapter 51.14 SELF-INSURERS

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51.14.010 Duty to secure payment of compensation—Options. Every employer under this title shall secure the payment of compensation under this title by:

(1) Insuring and keeping insured the payment of such benefits with the state fund; or

(2) Qualifying as a self-insurer under this title. [1971 ex.s. c 289 § 26.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.14.020 Qualification as self-insurer—Security deposit—Reinsurance. (1) An employer may qualify as a self-insurer by establishing to the director's satisfaction that he has sufficient financial ability to make certain the prompt payment of all compensation under this title and all assessments which may become due from such employer.

(2) A self-insurer may establish sufficient financial ability by depositing in an escrow account in a depository designated by the director, money and/or corporate or governmental securities approved by the director, or a surety bond written by any company admitted to transact surety business in this state filed with the department. The money, securities, or bond shall be in an amount reasonably sufficient in the director's discretion to insure payment of reasonably foreseeable compensation and assessments but not less than the employer's normal expected annual claim liabilities and in no event less than one hundred thousand dollars. In arriving at the amount of money, securities, or bond required under this subsection, the director shall take into consideration the financial ability of the employer to pay compensation and assessments and his probable continuity of operation. The money, securities, or bond so deposited shall be held by the director to secure the payment of compensation by the self-insurer and to secure payment of his assessments. The amount of security may be increased or decreased from time to time by the director. The income from any securities deposited may be distributed currently to the self-insurer.

(3) Securities or money deposited by an employer pursuant to subsection (2) of this section shall be returned to him upon his written request provided the employer files the bond required by such subsection.

(4) If the employer seeking to qualify as a self-insurer has previously insured with the state fund, the director shall require the employer to make up his proper share of any deficit or insufficiency in the state fund as a condition to certification as a self-insurer.

(5) A self-insurer may reinsure a portion of his liability under this title with any reinsurer authorized to transact such reinsurance in this state: *Provided*, That the reinsurer may not participate in the administration of the responsibilities of the self-insurer under this title. Such reinsurance may not exceed eighty percent of the liabilities under this title. [1972 ex.s. c 43 § 16; 1971 ex.s. c 289 § 27.]

51.14.030 Certification of employer as self-insurer—Requirements. The director may issue a certification that an employer is qualified as a self-insurer when such employer meets the following requirements:

(1) He has fulfilled the requirements of RCW 51.14.020.

(2) He has submitted to the department a payroll report for the preceding consecutive twelve month period.

(3) He has submitted to the department a sworn itemized statement indicating that the employer has sufficient liquid assets to meet his estimated liabilities as a self-insurer.

(4) He has submitted to the department a description of the safety organization maintained by him within his

establishment that indicates a record of accident prevention.

(5) He has submitted to the department a description of the administrative organization to be maintained by him to manage industrial insurance matters including:

- (a) The reporting of injuries;
- (b) The authorization of medical care;
- (c) The payment of compensation;
- (d) The handling of claims for compensation;
- (e) The name and location of each business location of the employer; and
- (f) The qualifications of the personnel of the employer to perform this service.

Such certification shall remain in effect until withdrawn by the director or surrendered by the employer with the approval of the director. An employer's qualification as a self-insurer shall become effective on the date of certification or any date specified in the certificate after the date of certification. [1971 ex.s. c 289 § 28.]

51.14.040 Surety liability—Termination. (1) The surety on a bond filed by a self-insurer pursuant to this title may terminate its liability thereon by giving the director written notice stating when, not less than thirty days thereafter, such termination shall be effective.

(2) In case of such termination, the surety shall remain liable, in accordance with the terms of the bond, with respect to future compensation for injuries to employees of the self-insurer occurring prior to the termination of the surety's liability.

(3) If the bond is terminated for any reason other than the employer's terminating his status as a self-insurer, the employer shall, prior to the date of termination of the surety's liability, otherwise comply with the requirements of this title.

(4) The liability of a surety on any bond filed pursuant to this section shall be released and extinguished and the bond returned to the employer or surety provided either such liability is secured by another bond filed, or money or securities deposited as required by this title. [1971 ex.s. c 289 § 29.]

51.14.050 Termination of self-insurer status—Notice—Financial requirements. (1) Any employer may at any time terminate his status as a self-insurer by giving the director written notice stating when, not less than thirty days thereafter, such termination shall be effective, provided such termination shall not be effective until the employer either shall have ceased to be an employer or shall have filed with the director for state industrial insurance coverage under this title.

(2) An employer who ceases to be a self-insurer, and who so files with the director, must maintain money, securities or surety bonds deemed sufficient in the director's discretion to cover the entire liability of such employer for injuries or occupational diseases to his employees which occurred during the period of self-insurance: *Provided*, That the director may agree for the medical aid and accident funds to assume the obligation of such claims, in whole or in part, and shall adjust the employer's premium rate to provide for the payment

of such obligations on behalf of the employer. [1971 ex.s. c 289 § 30.]

51.14.060 Default by self-insurer—Director authorized to sue, sell securities, fulfill employer obligations—Subrogation rights. (1) The director may, in cases of default upon any obligation under this title by the self-insurer, after ten days notice by certified mail to the defaulting self-insurer of his intention to do so, bring suit upon such bond or collect the interest and principal of any of the securities as they may become due or sell the securities or any of them as may be required or apply the money deposited, all in order to pay compensation, discharge the obligations of the self-insurer under this title, and pay premiums for future insurance of the employer's obligations.

(2) The director shall be authorized to fulfill the defaulting self-insured employer's obligations under this title, paying the necessary premium from the defaulting employer's deposit or from other funds provided under this title for the satisfaction of claims against the defaulting employer, and having subrogation rights against the defaulting employer to the extent of any funds, other than the employer's deposit, expended for the payment of premiums or compensation in performance of the defaulting employer's obligations. [1971 ex.s. c 289 § 31.]

51.14.070 Payment of compensation upon default—Subrogation right. (1) Whenever compensation due under this title is not paid because of an uncorrected default of a self-insurer, such compensation shall be paid from the medical aid and accidents funds only after the moneys available from the bonds or other security provided under RCW 51.14.020 have been exhausted.

(2) Such defaulting self-insurer or surety, if any, shall be liable for payment into the appropriate fund of the amounts paid therefrom by the director, and for the purpose of enforcing this liability the director, for the benefit of the appropriate fund, shall be subrogated to all of the rights of the person receiving such compensation. [1971 ex.s. c 289 § 36.]

51.14.080 Withdrawal of certification—Grounds. Certification of a self-insurer shall be withdrawn by the director upon one or more of the following grounds:

(1) The employer no longer meets the requirements of a self-insurer; or

(2) The self-insurer's deposit is insufficient; or

(3) The self-insurer intentionally or repeatedly induces employees to fail to report injuries, induces claimants to treat injuries in the course of employment as off-the-job injuries, persuades claimants to accept less than the compensation due, or unreasonably makes it necessary for claimants to resort to proceedings against the employer to obtain compensation; or

(4) The self-insurer habitually fails to comply with rules and regulations of the director regarding reports or other requirements necessary to carry out the purposes of this title; or

(5) The self-insurer habitually engages in a practice of arbitrarily or unreasonably refusing employment to applicants for employment or discharging employees because of nondisabling bodily conditions. [1971 ex.s. c 289 § 32.]

51.14.090 Petition by employees for hearing to withdraw certification—Grounds—Notice—Opportunity to cure—Appeal. (1) Upon the petition of any employee, union or association having a substantial number of employees in the employ of said self-insurer the director shall hold a hearing to determine whether or not there are grounds for the withdrawal of certification of a self-insurer. He shall serve upon the self-insurer and upon any employee union or association having a substantial number of employees in the employ of said self-insurer, personally or by certified mail, a notice of intention to withdraw, or not to withdraw, certification of the self-insurer, which notice shall describe the nature and location or locations of the plants or operations involved; and the specific nature of the reasons for his decision. If the decision is to withdraw certification, it shall include the period of time within which the ground or grounds therefor existed or arose; a directive to the self-insurer specifying the manner in which the grounds may be eliminated; and the date, not less than thirty days after the self-insurer's receipt of the notice, when the certification will be withdrawn in the absence of a satisfactory elimination of the grounds for withdrawal of the certificate.

(2) An appeal of such notice of intention to withdraw, or not to withdraw, certification of a self-insurer may be taken by the self-insurer, or by any employee, or union, or association having a substantial number of employees in the employ of said self-insurer. Proceedings on such appeal shall be as prescribed in this title. Appeal by a self-insurer of notice of intention to withdraw certification shall not act as a stay of the withdrawal, unless the board, or court, for good cause shown, orders otherwise. [1971 ex.s. c 289 § 33.]

51.14.100 Notice of compliance with title to be posted—Penalty. (1) Every employer subject to the provisions of this title shall post and keep posted in a conspicuous place or places in and about his place or places of business a reasonable number of typewritten or printed notices of compliance substantially identical to a form prescribed by the director, stating that such employer is subject to the provisions of this title. Such notice shall advise whether the employer is self-insured or has insured with the department, and shall designate a person or persons on the premises to whom report of injury shall be made.

(2) Any employer who has failed to open an account with the department or qualify as a self-insurer shall not post or permit to be posted on or about his place of business or premises any notice of compliance with this title and any wilful violation of this subsection by any officer or supervisory employee of an employer shall be a misdemeanor. [1971 ex.s. c 289 § 34.]

51.14.110 Employer's duty to maintain records, furnish information. Every self-insurer shall maintain a record of all payments of compensation made under this title. The self-insurer shall furnish to the director all information he has in his possession as to any disputed claim, upon forms approved by the director. [1971 ex.s. c 289 § 35.]

51.16.040 Occupational diseases—Compensation and benefits. The compensation and benefits provided for occupational diseases shall be paid and in the same manner as compensation and benefits for injuries under this title. [1971 ex.s. c 289 § 83; 1961 c 23 § 51.16.040. Prior: 1959 c 308 § 12; 1941 c 235 § 2; Rem. Supp. 1941 7679-1.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

**Chapter 51.16
ASSESSMENT AND COLLECTION OF
PREMIUMS—PAYROLLS AND RECORDS**

- Sections
- 51.16.035 Classification of occupations or industries—Premium rates fixed, readjusted—Rules and regulations authorized.
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 - 51.16.170 Lien for premiums, assessments, contributions, and penalties—Priority—In general—Third party interests—Notice.
 - 51.16.180 Property acquired by state on execution.

51.16.035 Classification of occupations or industries—Premium rates fixed, readjusted—Rules and regulations authorized. The department shall classify all occupations or industries in accordance with their degree of hazard and fix therefor basic rates of premium which shall be the lowest necessary to maintain actuarial solvency of the accident and medical aid funds in accordance with recognized insurance principles. The department shall formulate and adopt rules and regulations governing the method of premium calculation and collection and providing for a rating system consistent with recognized principles of workmen's compensation insurance which shall be designed to stimulate and encourage accident prevention and to facilitate collection. The department may annually, or at such other times as it deems necessary to maintain solvency of the funds, readjust rates in accordance with the rating system to become effective on such dates as the department may designate. [1971 ex.s. c 289 § 16.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.16.042 Occupational and environmental research facility at University of Washington—Employers to share costs. Inasmuch as business, industry and labor desire to provide for testing, research, training and teaching facilities and consulting services at the University of Washington for industrial and occupational health for workmen in the environmental research facility thereat, all employers shall bear their proportionate share of the cost therefor. The director may require payments to the department from all employers under this title and may make rules and regulations in connection therewith, which costs shall be paid from the department, in lieu of the previous provisions of RCW 28B.20.458. [1971 ex.s. c 289 § 84; 1963 c 151 § 2.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

Occupational and environmental research facility at University of Washington: RCW 28B.20.450-28B.20.458.

51.16.050 Building industry—Rate base computation. The premiums of employers of the building industry, which shall include all field activities in connection with the erection, alteration, repairing, or demolishing of any building or buildings or parts thereof or appurtenance thereto, adapted to residential, business, governmental, educational, or manufacturing uses, shall be computed on a base rate only but appropriate annual dividends shall be returned to such employers based upon a protective premium formula promulgated by the director which encourages accident prevention incentives: *Provided*, That the total base rate premium shall not exceed one hundred twenty per centum of a rate necessary to assure that premiums assessed against such employers will be neither excessive nor inadequate for payment of all claims incurred by such employers. [1971 ex.s. c 274 § 1; 1961 c 23 § 51.16.050. Prior: 1951 c 198 § 1; 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676e, part.]

51.16.060 Quarterly report of payrolls. Every employer not qualifying as a self-insurer shall insure with the state and shall, on or before the last day of January, April, July and October of each year thereafter, furnish the department with a true and accurate payroll for the period in which workmen were employed by him during the preceding calendar quarter, the total amount paid to such workmen during such preceding calendar quarter, and a segregation of employment in the different classes established pursuant to this title, and shall pay his premium thereon to the appropriate fund. The sufficiency of such statement shall be subject to the approval of the director: *Provided*, That the director may in

his discretion and for the effective administration of this title require an employer in individual instances to furnish a supplementary report containing the name of each individual workman, his hours worked, his rate of pay and the class or classes in which such work was performed: *Provided, further*, That in the event an employer shall furnish the department with four consecutive quarterly reports wherein each such quarterly report indicates that no premium is due the department may close the account: *And, provided further*, That the department may promulgate rules and regulations in accordance with chapter 34.04 RCW to establish other reporting periods and payment due dates in lieu of reports and payments following each calendar quarter, and may also establish terms and conditions for payment of premiums and assessments based on estimated payrolls, with such payments being subject to approval as to sufficiency of the estimated payroll by the department, and also subject to appropriate periodic adjustments made by the department based on actual payroll. [1973 1st ex.s. c 32 § 1; 1971 ex.s. c 289 § 76; 1965 ex.s. c 80 § 1; 1961 c 23 § 51.16.060. Prior: 1959 c 308 § 14; 1957 c 70 § 47; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.16.070 Employer's office record of employment—Confidentiality. Every employer shall keep at his place of business a record of his employment from which the information needed by the department may be obtained and such record shall at all times be open to the inspection of the director, supervisor of industrial insurance, or the traveling auditors, agents, or assistants of the department, as provided in RCW 51.48.040.

Information obtained from employing unit records under the provisions of this title shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but any interested party shall be supplied with information from such records to the extent necessary for the proper presentation of the case in question: *Provided*, That any employing unit may authorize inspection of its records by written consent. [1961 c 23 § 51.16.070. Prior: 1957 c 70 § 48; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

51.16.090 Employer may not evade unfavorable cost experience—Continuation of experience rating when legal structure of employer changes. To the end that no employer shall evade the burdens imposed by an unfavorable or high cost experience, the director may determine whether or not an increase, decrease, or change (1) of operating property; (2) of interest in operating property; (3) of employer; (4) of personnel or interest in employer is sufficient to show a bona fide change which would make inoperative any high cost experience: *Provided*, That where an employer is now or has prior to January 1, 1958, been covered under the provisions of this title for a period of at least two years and subsequent thereto the legal structure of the employer changes by way of incorporation, disincorporation,

merger, consolidation, transfer of stock ownership, or by any other means, such person or entity as legally reconstituted shall be entitled to a continuation of the experience rating which existed prior to such change in the employer's legal structure unless there has been such a substantial change as provided in subdivisions (1), (2), (3) or (4) of this section as would warrant making inoperative any high cost experience. [1961 c 23 § 51.16.090. Prior: 1959 c 179 § 1; 1957 c 70 § 49; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

51.16.100 Changes in classification. It is the intent that the accident fund shall ultimately become neither more nor less than self-supporting, except as provided in RCW 51.16.105 and, if in the adjustment of premium rates by the director the moneys paid into the fund by any class or classes shall be insufficient to properly and safely distribute the burden of accidents occurring therein, the department may divide, rearrange, or consolidate such class or classes, making such adjustment or transfer of funds as it may deem proper. The director shall make corrections of classifications or subclassifications or changes in rates, classes and subclasses when the best interest of such classes or subclasses will be served thereby. [1961 c 23 § 51.16.100. Prior: 1953 c 218 § 1; prior: (i) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part. (ii) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676e, part.]

51.16.105 Expenses of safety division, how financed. All expenses of the industrial safety and health division of the department pertaining to workmen's compensation shall be paid by the department and financed by premiums and by assessments collected from a self-insurer as provided in this title. [1973 1st ex.s. c 52 § 8; 1971 ex.s. c 289 § 86; 1961 c 23 § 51.16.105. Prior: 1953 c 218 § 2.]

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.16.110 New businesses or resumed operations. Every employer who shall enter into any business, or who shall resume operations in any work or plant after the final adjustment of his payroll in connection therewith, shall, before so commencing or resuming operations, as the case may be, notify the director of such fact, accompanying such notification with a cash deposit in a sum equal to the estimated premiums for the first three calendar months of his proposed operations which shall remain on deposit subject to the other provisions of this section.

The director may, in his discretion and in lieu of such deposit, accept a bond, in an amount which he deems sufficient, to secure payment of premiums due or to become due to the accident fund and medical aid fund. The deposit or posting of a bond shall not relieve the employer from paying premiums subsequently due.

Should the employer acquire sufficient assets to assure the payment of premiums due to the accident fund

and the medical aid fund the director may, in his discretion, refund the deposit or cancel the bond.

If the employer ceases to be an employer under RCW 51.08.070, the director shall, upon receipt of all payments due the accident fund and medical aid fund, refund to the employer all deposits remaining to the employer's credit and shall cancel any bond given under this section. [1971 ex.s. c 289 § 4; 1961 c 23 § 51.16.110. Prior: 1959 c 179 § 2; 1959 c 308 § 15; prior: 1957 c 70 § 50; 1951 c 236 § 4; 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.120 Distribution of further accident cost. Whenever a workman has sustained a previous bodily infirmity or disability from any previous injury or disease and shall suffer a further injury or disease in employment covered by this title and become totally and permanently disabled from the combined effects thereof, then the experience record of the employer at the time of said further injury or disease shall be charged only with the accident cost which would have resulted solely from said further injury or disease, had there been no preexisting disability, and which accident cost shall be based upon an evaluation of the disability by medical experts. The difference between the charge thus assessed to the employer at the time of said further injury or disease and the total cost of the pension reserve shall be assessed against the second injury fund. [1972 ex.s. c 43 § 13; 1961 c 23 § 51.16.120. Prior: 1959 c 308 § 16; 1945 c 219 § 1; 1943 c 16 § 1; Rem. Supp. 1945 § 7676-1a.]

51.16.130 Distribution of catastrophe cost. Whenever there shall occur an accident in which three or more employees of an employer insured with the state fund are fatally injured or sustain permanent total disability, the amount of total cost other than medical aid costs arising out of such accident that shall be charged to the account of the employer, shall be twice the average cost of the pension claims arising out of such accident. The entire cost of such accident, exclusive of medical aid costs, shall be charged against and defrayed by the catastrophe injury account. [1972 ex.s. c 43 § 14; 1961 c 23 § 51.16.130. Prior: 1957 c 70 § 22; prior: 1947 c 247 § 1, part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.16.140 Premium liability of workman. Every employer who is not a self-insurer shall deduct from the pay of each of his workmen one-half of the amount he is required to pay, for medical benefits within each risk classification. Such amount shall be periodically determined by the director and reported by him to all employers under this title: *Provided*, That the state governmental unit shall pay the entire amount into the medical aid fund for volunteers, as defined in RCW 51.12.035, and the state apprenticeship council shall pay the entire amount into the medical aid fund for registered apprentices or trainees, for the purposes of RCW 51.12.130. It shall be unlawful for the employer, unless

specifically authorized by this title, to deduct or obtain any part of the premium or other costs required to be by him paid from the wages or earnings of any of his workmen, and the making of or attempt to make any such deduction shall be a gross misdemeanor. [1973 c 110 § 2; 1971 ex.s. c 289 § 77; 1971 c 20 § 2; 1961 c 23 § 51.16.140. Prior: (i) 1923 c 136 § 8, part; 1919 c 129 § 1, part; 1917 c 29 § 4, part; RRS § 7713, part. (ii) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676e, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.16.150 Delinquent employers—Penalty after demand—Injunctive relief. If any employer shall default in any payment to any fund the sum due shall be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. If such default occurs after demand, there shall also be collected a penalty equal to twenty-five percent of the amount of the defaulted payment or payments, and the director may require from the defaulting employer a bond to the state for the benefit of any fund, with surety to the director's satisfaction, in the penalty of double the amount of the estimated payments which will be required from such employer into the said funds for and during the ensuing one year, together with any penalty or penalties incurred. In case of refusal or failure after written demand personally served to furnish such bond, the state shall be entitled to an injunction restraining the delinquent from prosecuting an occupation or work until such bond is furnished, and until all delinquent premiums, penalties, interest and costs are paid, conditioned for the prompt and punctual making of all payments into said funds during such periods, and any sale, transfer, or lease attempted to be made by such delinquent during the period of any of the defaults herein mentioned, of his works, plant, or lease thereto, shall be invalid until all past delinquencies are made good, and such bond furnished. [1972 ex.s. c 43 § 15; 1961 c 23 § 51.16.150. Prior: 1959 c 308 § 22; prior: 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.16.155 Failure or refusal of employer to report or pay premiums due—Collection. In every case where an employer insured with the state fails or refuses to file any report of payroll required by the department and fails or refuses to pay the premiums due on such unreported payroll, the department shall have authority to estimate such payroll and collect premiums on the basis of such estimate.

If the report required and the premiums due thereon are not made within ten days from the mailing of such demand, the employer shall be in default as provided by this title and the department may have and recover judgment or file liens for such estimated premium or

the actual premium, whichever is greater. [1971 ex.s. c 289 § 87.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.16.160 Lien for premiums, assessments, contributions, and penalties—Priority—Probate, insolvency, etc. All actions for the recovery of delinquent premiums, assessments, contributions, and penalties therefor due any of the funds under this title shall be brought in the superior court and in all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for the payments due shall be a lien prior to all other liens or claims and on a parity with prior tax liens and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and all administrators, receivers, or assignees for the benefit of creditors shall notify the department of such administration, receivership, or assignment within thirty days from date of their appointment and qualification. In any action or proceeding brought for the recovery of payments due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department and the amount of such payroll for the period stated in the certificate shall be prima facie evidence of such fact. [1971 ex.s. c 289 § 78; 1961 c 23 § 51.16.160. Prior: 1959 c 308 § 23; prior: 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.16.170 Lien for premiums, assessments, contributions, and penalties—Priority—In general—Third party interests—Notice. Separate and apart from and in addition to the foregoing provisions in this chapter, the claims of the state for payments and penalties due under this title shall be a lien prior to all other liens or claims and on a parity with prior tax liens not only against the interest of any employer, but against the interests of all others, in real estate, plant, works, equipment, and buildings improved, operated, or constructed by any employer, and also upon any products or articles manufactured by such employer.

The lien created by this section shall attach from the date of the commencement of the labor upon such property for which such premiums are due. In order to avail itself of the lien hereby created, the department shall, within four months after the employer has made report of his payroll and has defaulted in the payment of his premiums thereupon, file with the county auditor of the county within which such property is then situated, a statement in writing describing in general terms the property upon which a lien is claimed and stating the amount of the lien claimed by the department. If any employer fails or refuses to make report of his payroll, the lien hereby created shall continue in full force

and effect, although the amount thereof is undetermined and the four months' time within which the department shall file its claim of lien shall not begin to run until the actual receipt by the department of such payroll report. From and after the filing of such claim of lien, the department shall be entitled to commence suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property, and in such suit the certificate of the department stating the date of the actual receipt by the department of such payroll report shall be prima facie evidence of such fact. [1961 c 23 § 51.16.170. Prior: 1959 c 308 § 24; prior: 1951 c 214 § 1; 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

51.16.180 Property acquired by state on execution. The director shall have the custody of all property acquired by the state at execution sale upon judgments obtained for delinquent payments and penalties therefor and costs, and may sell and dispose of the same at private sales for the sale purchase price, and shall pay the proceeds into the state treasury to the credit of the appropriate fund. In case of the sale of real estate the director shall execute the deed in the name of the state. [1971 ex.s. c 289 § 79; 1961 c 23 § 51.16.180. Prior: 1921 c 7 § 78, subdivision (4); RRS § 10836(4).]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

Chapter 51.24

ACTIONS AT LAW FOR INJURY OR DEATH

Sections

- 51.24.010 Right of action against third party—Intervention and subrogation rights of department or self-insurer—Compromise and settlement.
- 51.24.020 Action against employer for intentional injury.

51.24.010 Right of action against third party—Intervention and subrogation rights of department or self-insurer—Compromise and settlement. If the injury to a workman is due to negligence or wrong of another not in the same employ, the injured workman or, if death results from the injury, the surviving spouse, children, or dependents, as the case may be, shall elect whether to take under this title or seek a remedy against such other, such election to be in advance of any suit under this section and, if he takes under this title, the cause of action against such other shall be assigned to the department or self-insurer; if the other choice is made, the department or self-insurer shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected and the compensation provided or estimated by this title for such case: *Provided*, That the injured workman or if death results from the injury, the surviving spouse, children or dependents as the case may be, electing to seek a remedy against such other person, shall receive benefits payable under this title as if such election had not been made, and the department or self-insurer to the

extent of such payments having been made by the department or self-insurer to the injured workman or if death results from the injury, the surviving spouse, children or dependents as the case may be shall be subrogated to the rights of such person or persons against the recovery had from such third party and shall have a lien thereupon. Any such cause of action assigned to the department or self-insurer may be prosecuted or compromised by the department or self-insurer in its discretion in the name of the workman, beneficiaries, or legal representative. Any compromise by the workman of any such suit, which would leave a deficiency to be made good by the department or self-insurer may be made only with the written approval of the department or self-insurer. If such approval is not obtained, claim for the deficiency will be deemed to have been waived.

Any third party action brought under this title by such workman or beneficiary must be duly prosecuted; if the action is not filed or settled within one year of the notice of election, the cause of action shall be deemed assigned to the department or self-insurer if after thirty days notice the action is neither filed nor settled. If a cause of action which has been filed is not diligently prosecuted, the department or self-insurer shall have the right to petition the court in which the action is pending for an order assigning the cause of action to the department or self-insurer. Upon sufficient showing in the court's discretion of a lack of diligent prosecution, such an order shall issue.

In any action brought under this section wherein recovery is made by compromise and settlement or otherwise, the department or self-insurer, to the extent of the benefits paid or payable under this title, shall bear its proportionate share of attorney's fees and costs incurred by the injured workman or surviving spouse, children, or dependents, as the case may be, and the court shall approve the amount of attorney's fees. [1973 1st ex.s. c 154 § 93; 1971 ex.s. c 289 § 37; 1961 c 274 § 7; 1961 c 23 § 51.24.010. Prior: 1957 c 70 § 23; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

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

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.24.020 Action against employer for intentional injury. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, surviving spouse, child, or dependent of the workman shall have the privilege to take under this title and also have cause of action against the employer as if this title had not been enacted, for any excess of damages over the amount received or receivable under this title. [1973 1st ex.s. c 154 § 94; 1961 c 23 § 51.24.020. Prior: 1957 c 70 § 24; prior: 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part.]

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

Chapter 51.28 NOTICE AND REPORT OF ACCIDENT— APPLICATION FOR COMPENSATION

| Sections | |
|-----------|---|
| 51.28.010 | Notice of accident—Notification of workman's rights. |
| 51.28.020 | Workman's application for compensation—Physician to aid in. |
| 51.28.025 | Duty of self-insurer to report injury or disease—Contents—Penalty. |
| 51.28.030 | Beneficiaries' application for compensation—Notification of rights. |
| 51.28.040 | Application for change in compensation—Effective date. |
| 51.28.050 | Time limitation for filing application or enforcing claim for injury. |
| 51.28.055 | Time limitation for filing claim for occupational disease. |
| 51.28.060 | Proof of dependency. |
| 51.28.070 | Claim files and records confidential. |

51.28.010 Notice of accident—Notification of workman's rights. Whenever any accident occurs to any workman it shall be the duty of such workman or someone in his behalf to forthwith report such accident to his employer, superintendent or foreman in charge of the work, and of the employer to at once report such accident and the injury resulting therefrom to the department and also to any local representative of the department.

Upon receipt of such notice of accident, the director shall immediately forward to the workman and/or his dependents notification, in nontechnical language, of his rights under this title. [1971 ex.s. c 289 § 5; 1961 c 23 § 51.28.010. Prior: 1915 c 188 § 9; 1911 c 74 § 14; RRS § 7689.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.28.020 Workman's application for compensation—Physician to aid in. Where a workman is entitled to compensation under this title he shall file with the department or his self-insuring employer, as the case may be, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this title and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman. If application for compensation is made to a self-insuring employer, he shall forthwith send a copy thereof to the department. [1971 ex.s. c 289 § 38; 1961 c 23 § 51.28.020. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.28.025 Duty of self-insurer to report injury or disease—Contents—Penalty. (1) Whenever a self-insuring employer has notice or knowledge of an injury or occupational disease, he shall immediately report the same to the department on forms prescribed by the director. The report shall include:

(a) The name, address, and business of the employer;

(b) The name, address, and occupation of the employee;

(c) The date, time, cause, and nature of the injury or occupational disease;

(d) Whether the injury or occupational disease arose in the course of the injured employee's occupation; and

(e) Such other pertinent information as the director may prescribe by regulation.

(2) Failure or refusal to file the report required by subsection (1) shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected in a civil action in the name of the director and paid into the medical aid fund. [1971 ex.s. c 289 § 39.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.030 Beneficiaries' application for compensation—Notification of rights. Where death results from injury the parties entitled to compensation under this title, or someone in their behalf, shall make application for the same to the department or self-insurer as the case may be, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this title, certificates of attending physician, if any, and such proof as required by the rules of the department.

Upon receipt of notice of accident under RCW 51.28.010, the director shall immediately forward to the party or parties required to make application for compensation under this section, notification, in nontechnical language, of their rights under this title. [1972 ex.s. c 43 § 17; 1971 ex.s. c 289 § 6; 1961 c 23 § 51.28.030. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

51.28.040 Application for change in compensation—Effective date. If change of circumstances warrants an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor. [1961 c 23 § 51.28.040. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

51.28.050 Time limitation for filing application or enforcing claim for injury. No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued. [1961 c 23 § 51.28.050. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

51.28.055 Time limitation for filing claim for occupational disease. Claims for occupational disease or infection to be valid and compensable must be filed within one year following the date the workman had notice from a physician of the existence of his occupational disease, without reference to its date of origin. [1961 c 23 § 51.28.055. Prior: 1959 c 308 § 18; prior: 1957 c 70 § 16, part; 1951 c 236 § 1, part.]

51.28.060 Proof of dependency. A dependent shall at all times furnish the department with proof satisfactory to the director of the nature, amount and extent of the contribution made by the deceased workman.

Proof of dependency by any beneficiary residing without the United States shall be made before the nearest United States consul or consular agency, under the seal of such consul or consular agent, and the department may cause any warrant or warrants to which such beneficiary is entitled to be transmitted to the beneficiary through the nearest United States consul or consular agent. [1961 c 23 § 51.28.060. Prior: 1957 c 70 § 25; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

51.28.070 Claim files and records confidential. Information contained in the claim files and records of injured workmen, under the provisions of this title, shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but representatives of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant. Employers or their duly authorized representatives may review the files of their own injured workmen. [1961 c 23 § 51.28.070. Prior: 1957 c 70 § 51.]

Chapter 51.32

COMPENSATION—RIGHT TO AND AMOUNT

Sections

- 51.32.005 "Child" defined.
- 51.32.010 Who entitled to compensation.
- 51.32.015 Benefits provided for injury during course of employment and during lunch period—"Jobsite" defined—When workman lunch hours not reported.
- 51.32.020 Who not entitled to compensation.
- 51.32.030 When compensation payable to employer or member of corporate employer.
- 51.32.040 Exemption of awards—Payment of awards after death—Time limitations for filing—Confinement in institution under conviction and sentence.
- 51.32.050 Death benefits.
- 51.32.055 Determination of permanent disabilities.
- 51.32.060 Permanent total disability compensation—Personal attendant.
- 51.32.070 Additional payments for prior pensioners—Personal attendant (as amended by 1973 c 147 § 2).
- 51.32.070 Additional permits for prior pensioners—Personal attendant (as amended by 1973 1st ex.s. c 154 § 97).
- 51.32.073 Additional payments for prior pensioners—Premium liability of workman and employer for additional payments.
- 51.32.080 Permanent partial disability—Specified—Unspecified, rules authorized for classification thereof—Injury after permanent partial disability.
- 51.32.090 Temporary total disability—Partial restoration of earning power—When employer continues wages—Limitation.
- 51.32.095 Temporary total disability—Continuation of benefits during vocational rehabilitation authorized—Expert assistance—Room and board—Costs.

- 51.32.100 When preexisting disease delays or prevents recovery.
- 51.32.110 Medical examination—Refusal to submit—Traveling expenses—Pay for time lost.
- 51.32.120 Further accident after lump sum payment.
- 51.32.130 Lump sum for death or permanent total disability.
- 51.32.135 Closing of claim conclusive in pension cases—Consent of spouse may be required.
- 51.32.140 Nonresident alien beneficiary.
- 51.32.150 Lump sum to beneficiary outside state.
- 51.32.160 Aggravation, diminution, or termination.
- 51.32.180 Occupational diseases—Limitation.
- 51.32.190 Self-insurers—Notice of denial of claim, reasons—Procedure—Director authorized to investigate and settle controversies, enact rules and regulations.
- 51.32.200 Self-insurers—Enforcement of compensation order against.
- 51.32.210 Claims of injured workmen to be acted upon promptly—Payment—Acceptance—Effect.

Public assistance recipient receiving industrial insurance compensation, recovery by department: RCW 74.04.530-74.04.580.
Victims of crimes, rights to benefits: Chapter 7.68 RCW.

51.32.005 "Child" defined. The term "child" whenever used in this chapter means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, and illegitimate child legitimated prior to the injury, all while under the age of eighteen years, or under the age of twenty-one years while permanently enrolled at a full time course in an accredited school, and over the age of eighteen years if the child is a dependent invalid child. [1969 ex.s. c 77 § 2; 1961 c 23 § 51.32.005. Prior: 1951 c 115 § 6.]

51.32.010 Who entitled to compensation. Each workman injured in the course of his employment, or his family or dependents in case of death of the workman, shall receive compensation in accordance with this chapter, and, except as in this title otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever: *Provided*, That if an injured workman, or the surviving spouse of an injured workman shall not have the custody of a child for, or on account of whom payments are required to be made under this chapter, such payment or payments shall be made to the person having the lawful custody of such child. [1971 ex.s. c 289 § 40; 1961 c 23 § 51.32.010. Prior: 1957 c 70 § 26; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.32.015 Benefits provided for injury during course of employment and during lunch period—"Jobsite" defined—When workman lunch hours not reported. The benefits of Title 51 RCW shall be provided to each workman receiving an injury, as defined therein, during the course of his employment and also during his lunch period as established by the employer while on the jobsite. The jobsite shall consist of the premises as are occupied, used or contracted for by the employer for the business or work process in which the employer is then

engaged: *Provided*, That if a workman by reason of his employment leaves such jobsite under the direction, control or request of the employer and if such workman is injured during his lunch period while so away from the jobsite, the workman shall receive the benefits as provided herein: *And provided further*, That the employer need not consider the lunch period in his payroll for the purpose of reporting to the department unless the workman is actually paid for such period of time. [1971 ex.s. c 289 § 41; 1961 c 107 § 1.]

Reviser's note: Compare the second sentence of RCW 51.36.040 wherein the phrase "business of work process" is used.

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.020 Who not entitled to compensation. If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, or while the workman is engaged in the attempt to commit, or the commission of, a felony, neither the workman nor the widow, widower, child, or dependent of the workman shall receive any payment under this title.

An invalid child, while being supported and cared for in a state institution, shall not receive compensation under this chapter.

No payment shall be made to or for a natural child of a deceased workman and, at the same time, as the stepchild of a deceased workman. [1971 ex.s. c 289 § 42; 1961 c 23 § 51.32.020. Prior: 1957 c 70 § 27; prior: (i) 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.32.030 When compensation payable to employer or member of corporate employer. Any individual employer or any member or officer of any corporate employer who is carried upon the payroll at a salary or wage not less than the average salary or wage named in such payroll and who shall be injured, shall be entitled to the benefit of this title, as and under the same circumstances and subject to the same obligations as a workman: *Provided*, That no such employer or the beneficiaries of such employer shall be entitled to benefits under this title unless the director, prior to the date of the injury, has received notice in writing of the fact that such employer is being carried upon the payroll prior to the date of the injury as the result of which claims for a compensation are made. [1961 c 23 § 51.32.030. Prior: 1957 c 70 § 28; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.32.040 Exemption of awards—Payment of awards after death—Time limitations for filing—Confinement in institution under conviction and sentence. No money paid or payable under this title shall, except as provided for in RCW 74.20A.090 and 74.20A.100, prior to the issuance and delivery of the check or warrant therefor, be capable of being assigned, charged, or ever be taken in execution or attached or garnished, nor shall the same pass, or be paid, to any other person by operation of law, or by any form of voluntary assignment, or power of attorney. Any such assignment or charge shall be void: *Provided*, That if any workman suffers a permanent partial injury, and dies from some other cause than the accident which produced such injury before he shall have received payment of his award for such permanent partial injury, or if any workman suffers any other injury before he shall have received payment of any monthly installment covering any period of time prior to his death, the amount of such permanent partial award, or of such monthly payment or both, shall be paid to the surviving spouse, or to the child or children if there is no surviving spouse: *Provided further*, That, if any workman suffers an injury and dies therefrom before he shall have received payment of any monthly installment covering time loss for any period of time prior to his death, the amount of such monthly payment shall be paid to the surviving spouse, or to the child or children if there is no surviving spouse: *Provided further*, That any application for compensation under the foregoing provisos of this section shall be filed with the department or self-insuring employer within one year of the date of death: *Provided further*, That if the injured workman resided in the United States as long as three years prior to the date of injury, such payment shall not be made to any surviving spouse or child who was at the time of the injury a nonresident of the United States: *Provided further*, That any workman receiving benefits under this title who is subsequently confined in, or who subsequently becomes eligible therefor while confined in any institution under conviction and sentence shall have all payments of such compensation canceled during the period of confinement but after discharge from the institution payment of benefits thereafter due shall be paid if such workman would, but for the provisions of this proviso, otherwise be entitled thereto: *Provided further*, That if such incarcerated workman has during such confinement period, any beneficiaries, they shall be paid directly the monthly benefits which would have been paid to him for himself and his beneficiaries had he not been so confined. Any lump sum benefits to which the workman would otherwise be entitled but for the provisions of this proviso shall be paid on a monthly basis to his beneficiaries. [1974 1st ex.s. c 30 § 1. Prior: 1973 1st ex.s. c 154 § 95; 1972 ex.s. c 43 § 18; 1971 ex.s. c 289 § 43; 1965 ex.s. c 165 § 2; 1961 c 23 § 51-32.040; prior: 1957 c 70 § 29; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

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

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.32.050 Death benefits. (1) Where death results from the injury the expenses of burial not to exceed eight hundred dollars shall be paid.

(2) A surviving spouse of a deceased workman shall receive monthly throughout his or her life the following sums: (a) If there are no children of the deceased workman, sixty percent of the wages of the deceased workman but not less than one hundred eighty-five dollars. (b) If there is one child of the deceased workman, sixty-two percent of the wages of the deceased workman but not less than two hundred twenty-two dollars. (c) If there are two children of the deceased workman, sixty-four percent of the wages of the deceased workman but not less than two hundred fifty-three dollars. (d) If there are three children of the deceased workman, sixty-six percent of the wages of the deceased workman but not less than two hundred seventy-six dollars. (e) If there are four children of the deceased workman, sixty-eight percent of the wages of the deceased workman but not less than two hundred ninety-nine dollars. (f) If there are five or more children of the deceased workman, seventy percent of the wages of the deceased workman but not less than three hundred twenty-two dollars.

Payments to the surviving spouse of the deceased workman shall cease at the end of the month in which remarriage occurs: *Provided*, That the portion of the monthly payment made for the benefit of the children shall not be affected by such remarriage. In no event shall the monthly payments provided in this subsection exceed seventy-five percent of the average monthly wage in the state as computed under RCW 51.08.018.

In addition to the monthly payments above provided for, a surviving spouse, or dependent parent or parents, if there is no surviving spouse of any such deceased workman shall be forthwith paid the sum of eight hundred dollars.

Upon remarriage the surviving spouse shall receive, once and for all, a lump sum of seventy-five hundred dollars or fifty percent of the then remaining annuity value of the pension, whichever is the lesser, and the monthly payments to such surviving spouse shall cease at the end of the month in which remarriage occurs, but the monthly payments for the child or children shall continue as before.

(3) If there is a child or children and no surviving spouse of the deceased workman, a sum equal to thirty-five percent of the average monthly wage of the deceased workman shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: *Provided*, That benefits under this subsection or subsection (4) shall not exceed sixty-five percent of the monthly wages of the deceased workman at the time of his death or seventy-five percent of the average monthly wage in the state as defined in RCW 51.08.018, whichever is the lesser of the two sums.

(4) In the event a surviving spouse receiving monthly payments dies, leaving a child or children, each shall receive the same payment as provided in subsection (3) of this section.

(5) If the workman leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed sixty-five percent of the monthly wages of the deceased workman at the time of the death or seventy-five percent of the average monthly wage in the state as defined in RCW 51.08.018, whichever is the lesser of the two sums. If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-one while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) If the injured workman dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse shall receive benefits as if death resulted from the injury as provided in subsections (2) through (5) of this section. Upon remarriage the payments on account of the child or children shall continue as before to such child or children. [1973 1st ex.s. c 154 § 96; 1972 ex.s. c 43 § 19; 1971 ex.s. c 289 § 7; 1965 ex.s. c 122 § 1; 1961 c 274 § 1; 1961 c 23 § 51.32.050. Prior: 1957 c 70 § 30; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

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

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.32.055 Determination of permanent disabilities.

(1) One purpose of this title is to restore the injured workman as near as possible to the condition of self-support as an able-bodied workman. Benefits for permanent disability shall be determined under the director's supervision only after the injured workman's condition becomes fixed.

(2) All determinations of permanent disabilities shall be made by the department. Either the workman, employer, or self-insurer may make a request or such inquiry may be initiated by the director on his own motion. Such determinations shall be required in every instance where permanent disability is likely to be present. All medical reports and other pertinent information in the possession of or under the control of the

employer or self-insurer shall be forwarded to the director with such requests.

(3) A request for determination of permanent disability shall be examined by the department and an order shall issue in accordance with RCW 51.52.050.

(4) The department may require that the workman present himself for a special medical examination by a physician, or physicians, selected by the department, and the department may require that the workman present himself for a personal interview. In such event the costs of such examination or interview, including payment of any reasonable travel expenses, shall be paid by the department or self-insurer as the case may be.

(5) The director may establish a medical bureau within the department to perform medical examinations under this section. Physicians hired or retained for this purpose shall be grounded in industrial medicine and in the assessment of industrial physical impairment. Self-insurers shall bear a proportionate share of the cost of such medical bureau in a manner to be determined by the department.

(6) Where dispute arises from the handling of any claims prior to the condition of the injured workman becoming fixed, the workman, employer, or self-insurer may request the department to resolve the dispute or the director may initiate an inquiry on his own motion. In such cases the department shall proceed as provided in this section and an order shall issue in accordance with RCW 51.52.050. [1971 ex.s. c 289 § 46.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.060 Permanent total disability compensation—Personal attendant. When the supervisor of industrial insurance shall determine that permanent total disability results from the injury, the workman shall receive monthly during the period of such disability:

(1) If married at the time of injury, sixty-five percent of his wages but not less than two hundred fifteen dollars per month.

(2) If married with one child at the time of injury, sixty-seven percent of his wages but not less than two hundred fifty-two dollars per month.

(3) If married with two children at the time of injury, sixty-nine percent of his wages but not less than two hundred eighty-three dollars.

(4) If married with three children at the time of injury, seventy-one percent of his wages but not less than three hundred six dollars per month.

(5) If married with four children at the time of injury, seventy-three percent of his wages but not less than three hundred twenty-nine dollars per month.

(6) If married with five or more children at the time of injury, seventy-five percent of his wages but not less than three hundred fifty-two dollars per month.

(7) If unmarried at the time of the injury, sixty percent of his wages but not less than one hundred eighty-five dollars per month.

(8) If unmarried with one child at the time of injury, sixty-two percent of his wages but not less than two hundred twenty-two dollars per month.

(9) If unmarried with two children at the time of injury, sixty-four percent of his wages but not less than two hundred fifty-three dollars per month.

(10) If unmarried with three children at the time of injury, sixty-six percent of his wages but not less than two hundred seventy-six dollars per month.

(11) If unmarried with four children at the time of injury, sixty-eight percent of his wages but not less than two hundred ninety-nine dollars per month.

(12) If unmarried with five or more children at the time of injury, seventy percent of his wages but not less than three hundred twenty-two dollars per month.

(13) For any period of time where both husband and wife are entitled to compensation as temporarily or totally disabled workmen, only that spouse having the higher wages of the two shall be entitled to claim their child or children for compensation purposes.

(14) In case of permanent total disability, if the character of the injury is such as to render the workman so physically helpless as to require the hiring of the services of an attendant, the monthly payment by the department to such attendant for such services shall be an amount not to exceed forty percent of the average monthly wage in the state as computed in RCW 51.08.018 per month as long as such requirement continues, but such payments shall not obtain or be operative while the workman is receiving care under or pursuant to the provisions of chapters 51.36 and 51.40 RCW.

(15) Should any further accident result in the permanent total disability of an injured workman, he shall receive the pension to which he would be entitled, notwithstanding the payment of a lump sum for his prior injury.

(16) In no event shall the monthly payments provided in this section exceed seventy-five percent of the average monthly wage in the state as computed under the provisions of RCW 51.08.018, except that this limitation shall not apply to the payments provided for in subsection (14) of this section. [1973 c 147 § 1; 1972 ex.s. c 43 § 20; 1971 ex.s. c 289 § 8; 1965 ex.s. c 122 § 2; 1961 c 274 § 2; 1961 c 23 § 51.32.060. Prior: 1957 c 70 § 31; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.32.070 Additional payments for prior pensioners—Personal attendant (as amended by 1973 c 147 § 2). Notwithstanding any other provision of law, every surviving spouse receiving a pension under this title and every permanently totally disabled workman or temporarily totally disabled workman receiving a pension or compensation for temporary total disability under this title, pursuant to compensation schedules in effect prior to July 1, 1971, shall, after March 20, 1973, be paid fifty percent of the average monthly wage of the state as computed under RCW 51.08.018 per month, and an amount equal to five percent of such average monthly wage per month if married, and an additional two percent of such average monthly wage for each child.

If the character of the injury is such as to render the workman so physically helpless as to require the hiring of the services of an attendant, the monthly payment by the department to such attendant for such services shall not exceed forty percent of the average monthly wage in the state as computed pursuant to RCW 51.08.018 per month

as long as such requirement continues but such payments shall not obtain or be operative while the workman is receiving care under or pursuant to the provisions of chapters 51.36 and 51.40 RCW: *Provided*, That such payments shall not be considered compensation nor shall they be subject to any limitation upon total compensation payments.

No part of such additional payments shall be payable from the accident fund or be charged against any class under the industrial insurance law.

The director shall pay monthly to every such surviving spouse and totally disabled workman from the supplemental pension fund such an amount as will, when added to the pensions or temporary total disability compensation they are presently receiving, equal the amounts hereinabove specified.

In cases where money has been or shall be advanced to any such person from the pension reserve, the additional amount to be paid to him or her under this section shall be reduced by the amount of monthly pension which was or is predicated upon such advanced portion of the pension reserve. [1973 c 147 § 2; 1971 ex.s. c 289 § 9; 1965 ex.s. c 166 § 1; 1961 c 108 § 1; 1961 c 23 § 51.32.070. Prior: 1957 c 196 § 1; 1947 c 233 § 1; Rem. Supp. 1947 § 7679b.]

Reviser's note: RCW 51.32.070 was amended twice during the 1973 regular and first extraordinary sessions of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same legislative session, see RCW 1.12.025.

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.070 Additional payments for prior pensioners—Personal attendant (as amended by 1973 1st ex.s. c 154 § 97). Notwithstanding any other provision of law, every surviving spouse receiving a pension under this title shall, after July 1, 1971, be paid one hundred eighty-five dollars per month, and every permanently totally disabled workman or temporarily totally disabled workman receiving a pension or compensation for temporary total disability under this title shall, after such date, be paid one hundred eighty-five dollars per month, and one hundred fifteen dollars per month additional in cases requiring the services of an attendant, if unmarried at the time the injury occurred; two hundred fifteen dollars per month, and one hundred fifteen dollars per month additional in cases requiring the services of an attendant, if the totally disabled workman has an invalid spouse; and one hundred seventy-five dollars per month, in addition to any amount now or hereafter allowed in cases requiring the services of an attendant, if neither spouse is an invalid and the husband and wife are living together as such.

No part of such additional payments shall be payable from the accident fund.

The director shall pay monthly to every such surviving spouse, and totally disabled workman from the supplemental pension fund such an amount as will, when added to the pensions or temporary total disability compensation they are presently receiving, exclusive of amounts received for children or dependents or attendants, equal the amounts hereinabove specified.

In cases where money has been or shall be advanced to any such person from the pension reserve, the additional amount to be paid to him or her under this section shall be reduced by the amount of monthly pension which was or is predicated upon such advanced portion of the pension reserve. [1973 1st ex.s. c 154 § 97; 1971 ex.s. c 289 § 9; 1965 ex.s. c 166 § 1; 1961 c 108 § 1; 1961 c 23 § 51.32.070. Prior: 1957 c 196 § 1; 1947 c 233 § 1; Rem. Supp. 1947 § 7679b.]

Reviser's note: RCW 51.32.070 was amended twice during the 1973 regular and first extraordinary sessions of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same legislative session, see RCW 1.12.025.

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

51.32.073 Additional payments for prior pensioners—Premium liability of workman and employer for additional payments. Each employer shall retain from the earnings of each workman that amount as shall be fixed from time to time by the director, the basis for

measuring said amount to be determined by the director. The money so retained shall be matched in an equal amount by each employer, and all such moneys shall be remitted to the department in such manner and at such intervals as the department directs and shall be placed in the supplemental pension fund: *Provided*, That the state apprenticeship council shall pay the entire amount into the supplemental pension fund for registered apprentices or trainees during their participation in supplemental and related instruction classes. The moneys so collected shall be used exclusively for the additional payments prescribed in RCW 51.32.070 and shall be no more than necessary to make such payments on a current basis. [1973 c 110 § 3; 1972 ex.s. c 43 § 24; 1971 ex.s. c 289 § 17.]

51.32.080 Permanent partial disability—Specified—Unspecified, rules authorized for classification thereof—Injury after permanent partial disability. (1) For the permanent partial disabilities here specifically described, the injured workman shall receive compensation as follows:

LOSS BY AMPUTATION

| | |
|--|-------------|
| Of leg above the knee joint with short thigh stump (3" or less below the tuberosity of ischium) | \$18,000.00 |
| Of leg at or above knee joint with functional stump | 16,200.00 |
| Of leg below knee joint | 14,400.00 |
| Of leg at ankle (Syme) | 12,600.00 |
| Of foot at mid-metatarsals | 6,300.00 |
| Of great toe with resection of metatarsal bone | 3,780.00 |
| Of great toe at metatarsophalangeal joint . | 2,268.00 |
| Of great toe at interphalangeal joint | 1,200.00 |
| Of lesser toe (2nd to 5th) with resection of metatarsal bone | 1,380.00 |
| Of lesser toe at metatarsophalangeal joint | 672.00 |
| Of lesser toe at proximal interphalangeal joint | 498.00 |
| Of lesser toe at distal interphalangeal joint | 126.00 |
| Of arm at or above the deltoid insertion or by disarticulation at the shoulder | 18,000.00 |
| Of arm at any point from below the deltoid insertion to below the elbow joint at the insertion of the biceps tendon | 17,100.00 |
| Of arm at any point from below the elbow joint distal to the insertion of the biceps tendon to and including mid-metacarpal amputation of the hand | 16,200.00 |
| Of all fingers except the thumb at metacarpophalangeal joints | 9,720.00 |
| Of thumb at metacarpophalangeal joint or with resection of carpometacarpal bone | 6,480.00 |
| Of thumb at interphalangeal joint | 3,240.00 |
| Of index finger at metacarpophalangeal joint or with resection of metacarpal bone | 4,050.00 |
| Of index finger at proximal interphalangeal joint | 3,240.00 |

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|--|----------|
| Of index finger at distal interphalangeal joint | 1,782.00 |
| Of middle finger at metacarpophalangeal joint or with resection of metacarpal bone | 3,240.00 |
| Of middle finger at proximal interphalangeal joint | 2,592.00 |
| Of middle finger at distal interphalangeal joint | 1,458.00 |
| Of ring finger at metacarpophalangeal joint or with resection of metacarpal bone . . . | 1,620.00 |
| Of ring finger at proximal interphalangeal joint | 1,296.00 |
| Of ring finger at distal interphalangeal joint | 810.00 |
| Of little finger at metacarpophalangeal joint or with resection of metacarpal bone . . . | 810.00 |
| Of little finger at proximal interphalangeal joint | 648.00 |
| Of little finger at distal interphalangeal joint | 324.00 |

MISCELLANEOUS

| | |
|---|-----------|
| Loss of one eye by enucleation | 7,200.00 |
| Loss of central visual acuity in one eye .. | 6,000.00 |
| Complete loss of hearing in both ears | 14,400.00 |
| Complete loss of hearing in one ear | 2,400.00 |

(2) Compensation for amputation of a member or part thereof at a site other than those above specified, and for loss of central visual acuity and loss of hearing other than complete, shall be in proportion to that which such other amputation or partial loss of visual acuity or hearing most closely resembles and approximates. Compensation for any other permanent partial disability not involving amputation shall be in the proportion which the extent of such other disability, called unspecified disability, shall bear to that above specified, which most closely resembles and approximates in degree of disability such other disability, compensation for any other unspecified permanent partial disability shall be in an amount as measured and compared to total bodily impairment: *Provided*, That in order to reduce litigation and establish more certainty and uniformity in the rating of unspecified permanent partial disabilities, the department shall enact rules having the force of law classifying such disabilities in the proportion which the department shall determine such disabilities reasonably bear to total bodily impairment. In enacting such rules, the department shall give consideration to, but need not necessarily adopt, any nationally recognized medical standards or guides for determining various bodily impairments. For purposes of calculating monetary benefits, the amount payable for total bodily impairment shall be deemed to be thirty thousand dollars: *Provided*, That the total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed the sum of thirty thousand dollars: *Provided further*, That in case permanent partial disability compensation is followed by permanent total disability compensation, any portion of the permanent partial disability compensation which exceeds the amount that would have been paid the injured workman if permanent total disability compensation had

been paid in the first instance, shall be deducted from the pension reserve of such injured workman and his monthly compensation payments shall be reduced accordingly.

(3) Should a workman receive an injury to a member or part of his body already, from whatever cause, permanently partially disabled, resulting in the amputation thereof or in an aggravation or increase in such permanent partial disability but not resulting in the permanent total disability of such workman, his compensation for such partial disability shall be adjudged with regard to the previous disability of the injured member or part and the degree or extent of the aggravation or increase of disability thereof.

(4) When the compensation provided for in subsections (1) and (2) exceeds three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, payment shall be made in monthly payments in accordance with the schedule of temporary total disability payments set forth in RCW 51.32.090 until such compensation is paid to the injured workman in full, except that the first monthly payment shall be in an amount equal to three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, and interest shall be paid at the rate of six percent on the unpaid balance of such compensation commencing with the second monthly payment: *Provided*, That upon application of the injured workman the monthly payment may be converted, in whole or in part, into a lump sum payment, in which event the monthly payment shall cease in whole or in part. Such conversion may be made only upon written application of the injured workman to the department and shall rest in the discretion of the department depending upon the merits of each individual application: *Provided further*, That upon death of a workman all unpaid installments accrued, less interest, shall be paid in a lump sum amount to the widow or widower, or if there is no widow or widower surviving, to the dependent children of such claimant, and if there are no such dependent children, then to such other dependents as defined by this title. [1972 ex.s. c 43 § 21; 1971 ex.s. c 289 § 10; 1965 ex.s. c 165 § 1; 1961 c 274 § 3; 1961 c 23 § 51.32.080. Prior: 1957 c 70 § 32; prior: 1951 c 115 § 4; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

~~Saving—Severability—Repeal and saving—Effective date—~~
1923 c 136: See notes following RCW 51.04.030.

51.32.090 Temporary total disability—Partial restoration of earning power—When employer continues wages—Limitation. (1) When the total disability is only temporary, the schedule of payments contained in subdivisions (1) through (13) of RCW 51.32.060 as amended shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured workman as

of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3) As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable unless the loss of earning power shall exceed five percent.

(4) No workman shall receive compensation for or during the day on which injury was received or the three days following the same, unless his disability shall continue for a period of fourteen consecutive calendar days from date of injury.

(5) Should a workman suffer a temporary total disability and should his employer at the time of the injury continue to pay him the wages which he was earning at the time of such injury, such injured workman shall not receive any payment provided in subsection (1) of this section during the period his employer shall so pay such wages.

(6) In no event shall the monthly payments provided in this section exceed seventy-five percent of the average monthly wage in the state as computed under the provisions of RCW 51.08.018. [1972 ex.s. c 43 § 22; 1971 ex.s. c 289 § 11; 1965 ex.s. c 122 § 3; 1961 c 274 § 4; 1961 c 23 § 51.32.090. Prior: 1957 c 70 § 33; 1955 c 74 § 8; prior: 1951 c 115 § 3; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

~~Saving—Severability—Repeal and saving—Effective date—~~
1923 c 136: See notes following RCW 51.04.030.

51.32.095 Temporary total disability—Continuation of benefits during vocational rehabilitation authorized—Expert assistance—Room and board—Costs. One of the primary purposes of this title is the restoration of the injured workman to gainful employment. To this end, the department shall utilize the services of individuals whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation or retraining as may be reasonable to qualify the workman for employment consistent with his physical and mental status. Where, after evaluation and recommendation by such individuals and prior to final evaluation of the workman's permanent disability and in the sole opinion of the supervisor, vocational rehabilitation or retraining is both necessary and likely to restore the injured workman to a form of gainful employment, the supervisor may, in his sole discretion, continue the temporary total disability compensation under RCW 51.32.090 while the workman is actively and successfully undergoing a formal program of vocational rehabilitation or retraining: *Provided*, That such

compensation may not be authorized for a period of more than fifty-two weeks: *Provided further*, That such period may, in the sole discretion of the supervisor after his review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

In cases where the workman is required to reside away from his customary residence, the reasonable cost of board and lodging shall also be paid. Said costs shall be chargeable to the employer's cost experience or shall be paid by the self-insurer for workmen to whom he is liable for compensation and benefits under the provisions of this title. [1972 ex.s. c 43 § 23; 1971 ex.s. c 289 § 12.]

51.32.100 When preexisting disease delays or prevents recovery. If it is determined that an injured workman had, at the time of his injury, a preexisting disease and that such disease delays or prevents complete recovery from such injury, it shall be ascertained, as nearly as possible, the period over which the injury would have caused disability were it not for the diseased condition and the extent of permanent partial disability which the injury would have caused were it not for the disease, and compensation shall be awarded only therefor. [1971 ex.s. c 289 § 44; 1961 c 23 § 51.32.100. Prior: 1957 c 70 § 34; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.32.110 Medical examination—Refusal to submit—Traveling expenses—Pay for time lost. Any workman entitled to receive compensation or claiming compensation under this title shall, if requested by the department or self-insurer, submit himself for medical examination, at a time and from time to time, at a place reasonably convenient for the workman and as may be provided by the rules of the department. If the workman refuses to submit to medical examination, or obstructs the same, or, if any injured workman shall persist in unsanitary or injurious practices which tend to imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his recovery, the department or the self-insurer upon approval by the department, with notice to the workman may reduce or suspend the compensation of such workman so long as such refusal or practice continues. If the workman necessarily incurs traveling expenses in attending for examination pursuant to the request of the department, such traveling expenses shall be repaid to him out of the accident fund upon proper voucher and audit.

If the medical examination required by this section causes the workman to be absent from his work without pay he shall be paid for such time lost in accordance

with the schedule of payments provided in RCW 51.32.090 as amended. [1971 ex.s. c 289 § 13; 1961 c 23 § 51.32.110. Prior: 1917 c 28 § 18; 1915 c 188 § 5; 1911 c 74 § 13; RRS § 7688.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.120 Further accident after lump sum payment. Should a further accident occur to a workman who has been previously the recipient of a lump sum payment under this title, his future compensation shall be adjusted according to the other provisions of this chapter and with regard to the combined effect of his injuries and his past receipt of money under this title. [1961 c 23 § 51.32.120. Prior: 1957 c 70 § 35; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.32.130 Lump sum for death or permanent total disability. In case of death or permanent total disability, the monthly payment provided may be converted, in whole or in part, into a lump sum payment, not in any case to exceed eight thousand five hundred dollars, equal or proportionate, as the case may be, to the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made only upon written application (in case of minor children the application may be by either parent) to the department and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the department and applicant. In the event any payment shall be due to an alien residing in a foreign country, the department may settle the same by making a lump sum payment in such amount as may be agreed to by such alien, not to exceed fifty percent of the value of the annuity then remaining.

Nothing herein shall preclude the department from making, and authority is hereby given it to make, on its own motion, lump sum payments equal or proportionate, as the case may be, to the value of the annuity then remaining, in full satisfaction of claims due to dependents. [1961 c 23 § 51.32.130. Prior: 1957 c 70 § 45; prior: 1941 c 209 § 2; 1929 c 132 § 3; 1927 c 310 § 6(i); 1917 c 29 § 22; 1911 c 74 § 7; Rem. Supp. 1941 § 7681.]

51.32.135 Closing of claim conclusive in pension cases—Consent of spouse may be required. In pension cases when a workman or beneficiary closes his claim by full conversion to a lump sum or in any other manner as provided in RCW 51.32.130 and 51.32.150, such action shall be conclusive and effective to bar any subsequent application or claim relative thereto by the workman or any beneficiary which would otherwise exist had such person not elected to close the claim: *Provided*, The director may require the spouse of such

workman to consent in writing as a prerequisite to conversion and/or the closing of such claim. [1973 1st ex.s. c 154 § 98; 1961 c 23 § 51.32.135. Prior: 1953 c 143 § 1.]

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

51.32.140 Nonresident alien beneficiary. Except as otherwise provided by treaty, whenever compensation is payable to a beneficiary who is an alien not residing in the United States, there shall be paid fifty percent of the compensation herein otherwise provided to such beneficiary. But if a nonresident alien beneficiary is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in as favorable a degree as herein extended to nonresident aliens, he shall receive no compensation. No payment shall be made to any beneficiary residing in any country with which the United States does not maintain diplomatic relations when such payment is due. [1971 ex.s. c 289 § 45; 1961 c 23 § 51.32.140. Prior: 1957 c 70 § 36; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Effective date—**Severability**—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Saving—**Severability**—**Repeal and saving**—**Effective date**—1923 c 136: See notes following RCW 51.04.030.

51.32.150 Lump sum to beneficiary outside state. If a beneficiary shall reside or remove out of the state, the department may, with the written consent of the beneficiary, convert any monthly payments provided for such cases into a lump sum payment (not in any case to exceed the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, but in no case to exceed the sum of eighty-five hundred dollars). [1961 c 23 § 51.32.150. Prior: 1959 c 308 § 5; 1957 c 70 § 37; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.32.160 Aggravation, diminution, or termination. If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the director, through and by means of the division of industrial insurance, may, upon the application of the beneficiary, made within seven years after the establishment or termination of such compensation, or upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: *Provided*, That the time limitation of this section shall be ten years in claims involving loss of vision or function of the eyes.

No act done or ordered to be done by the director, or the department prior to the signing and filing in the

matter of a written order for such readjustment shall be ground for such readjustment. [1973 1st ex.s. c 192 § 1; 1961 c 23 § 51.32.160. Prior: 1957 c 70 § 38; prior: 1951 c 115 § 5; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.32.180 Occupational diseases—Limitation. Every workman who suffers disability from an occupational disease in the course of employment under the mandatory or elective adoption provisions of this title, or his family and dependents in case of death of the workman from such disease or infection, shall receive the same compensation benefits and medical, surgical and hospital care and treatment as would be paid and provided for a workman injured or killed in employment under this title: *Provided, however*, That this section and RCW 51.16.040 shall not apply where the last exposure to the hazards of the disease or infection occurred prior to January 1, 1937. [1971 ex.s. c 289 § 49; 1961 c 23 § 51.32.180. Prior: 1959 c 308 § 19; prior: 1941 c 235 § 1, part; 1939 c 135 § 1, part; 1937 c 212 § 1, part; Rem. Supp. 1941 § 7679-1, part.]

Effective date—**Severability**—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.190 Self-insurers—Notice of denial of claim, reasons—Procedure—Director authorized to investigate and settle controversies, enact rules and regulations. (1) If the self-insurer denies a claim for compensation, written notice of such denial, clearly informing the claimant of the reasons therefor and that the director will rule on the matter shall be mailed or given to the claimant and the director within seven days after the self-insurer has notice of the claim.

(2) Until such time as the department has entered an order in a disputed case acceptance of compensation by the claimant shall not be considered a binding determination of his rights under this title. Likewise the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments.

(3) Upon making the first payment of income benefits, and upon stopping or changing of such benefits except where a determination of the permanent disability has been made as elsewhere provided in this title, the self-insurer shall immediately notify the director in accordance with a form to be prescribed by the director that the payment of income benefits has begun or has been stopped or changed. Where temporary disability compensation is payable, the first payment thereof shall be made within fourteen days after notice of claim and shall continue at regular semimonthly or biweekly intervals.

(4) If, after the payment of compensation without an award, the self-insurer elects to controvert the right to compensation, the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments. The acceptance of compensation by the

workman or his beneficiaries shall not be considered a binding determination of their rights under this title.

(5) The director (a) may, upon his own initiative at any time in a case in which payments are being made without an award, and (b) shall, upon receipt of information from any person claiming to be entitled to compensation, from the self-insurer, or otherwise that the right to compensation is controverted, or that payment of compensation has been opposed, stopped or changed, whether or not claim has been filed, promptly make such inquiry as circumstances require, cause such medical examinations to be made, hold such hearings, require the submission of further information, make such orders, decisions or awards, and take such further action as he considers will properly determine the matter and protect the rights of all parties.

(6) The director, upon his own initiative, may make such inquiry as circumstances require or is necessary to protect the rights of all the parties and he may enact rules and regulations providing for procedures to ensure fair and prompt handling by self-insurers of the claims of workmen and beneficiaries. [1972 ex.s. c 43 § 25; 1971 ex.s. c 289 § 47.]

51.32.200 Self-insurers—Enforcement of compensation order against. (1) If a self-insurer fails, refuses, or neglects to comply with a compensation order which has become final and is not subject to review or appeal, the director or any person entitled to compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for the county in which the self-insurer may be served with process.

(2) The court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this title. [1971 ex.s. c 289 § 48.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.32.210 Claims of injured workmen to be acted upon promptly—Payment—Acceptance—Effect. Claims of injured workmen of employers who have secured the payment of compensation by insuring with the department shall be promptly acted upon by the department. Where temporary disability compensation is payable, the first payment thereof shall be mailed within fourteen days after receipt of the claim at the department's offices in Olympia and shall continue at regular semimonthly intervals. The payment of this or any other benefits under this title, prior to the entry of an order by the department in accordance with RCW 51.52.050 as now or hereafter amended, shall be not considered a binding determination of the obligations of the department under this title. The acceptance of

compensation by the workman or his beneficiaries prior to such order shall likewise not be considered a binding determination of their rights under this title. [1972 ex.s. c 43 § 26.]

Chapter 51.36 MEDICAL AID

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| Sections | |
| 51.36.010 | Extent and duration. |
| 51.36.020 | Transportation to place of treatment—Artificial substitutes and mechanical aids. |
| 51.36.030 | First aid. |
| 51.36.040 | Benefits provided for injury during course of employment and during lunch period—"Jobsite" defined—When workman lunch hours not reported. |
| 51.36.050 | Rehabilitation center—Contracts with self-insurers. |
| 51.36.060 | Duties of attending physician—Medical information. |
| 51.36.070 | Medical examination—Reports—Costs. |
| 51.36.080 | Fees and medical charges. |

51.36.010 Extent and duration. Upon the occurrence of any injury to a workman entitled to compensation under the provisions of this title, he shall receive proper and necessary medical and surgical services at the hands of a physician of his own choice, if conveniently located, and proper and necessary hospital care and services during the period of his disability from such injury, but the same shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him, except when the workman returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him shall cease: *Provided*, That after any injured workman has returned to his work his medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or he is placed upon the permanent pension roll: *Provided, however*, That the supervisor of industrial insurance, solely in his discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such workman's life. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary. [1971 ex.s. c 289 § 50; 1965 ex.s. c 166 § 2; 1961 c 23 § 51.36.010. Prior: 1959 c 256 § 2; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.36.020 Transportation to place of treatment—Artificial substitutes and mechanical aids. When the injury to any workman is so serious as to require his being taken from the place of injury to a place of treatment, his employer shall, at the expense of the medical aid fund, or self-insurer, as the case may be, furnish transportation to the nearest place of proper treatment.

Every workman whose injury results in the loss of one or more limbs or eyes shall be provided with proper artificial substitutes and every workman, who suffers an injury to an eye producing an error of refraction, shall be once provided proper and properly equipped lenses to correct such error of refraction and his disability rating shall be based upon the loss of sight before correction. Every workman, whose accident results in damage to or destruction of an artificial limb, eye or tooth, shall have same repaired or replaced. Every workman whose eyeglasses or lenses are damaged, destroyed, or lost as a result of an industrial accident shall have the same restored or replaced. The department or self-insurer shall be liable only for the cost of restoring damaged eyeglasses to their condition at the time of the accident. All mechanical appliances necessary in the treatment of an injured workman, such as braces, belts, casts and crutches, shall be provided and all mechanical appliances required as permanent equipment after treatment has been completed shall continue to be provided or replaced without regard to the date of injury or date treatment was completed, notwithstanding any other provision of law. A workman, whose injury is of such short duration as to bring him within the provisions of subsection (4) of RCW 51.32.090 shall nevertheless receive during the omitted period medical, surgical and hospital care and service and transportation under the provisions of this chapter. [1971 ex.s. c 289 § 51; 1965 ex.s. c 166 § 3; 1961 c 23 § 51.36.020. Prior: 1959 c 256 § 3; prior: 1951 c 236 § 6; 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.36.030 First aid. Every employer, who employs less than fifty workmen, shall keep at his plant a first aid kit equipped as required by the department with materials for first aid to his injured workmen. Every employer who employs within a radius of one-half mile of any plant or establishment fifty or more workmen, shall keep one first aid station equipped as required by the department with materials for first aid to his injured workmen, and shall cooperate with the department in training one or more employees in first aid to the injured. The maintenance of such first aid kits and stations shall be deemed to be a part of any educational standards established under Title 49 RCW. [1961 c 23 § 51.36.030. Prior: 1959 c 256 § 4; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.36.040 Benefits provided for injury during course of employment and during lunch period—"Jobsite" defined—When workman lunch hours not reported. The benefits of Title 51 RCW shall be provided to each workman receiving an injury, as defined therein, during the course of his employment and also during his lunch period as established by the employer while on the jobsite. The jobsite shall consist of the premises as are occupied, used or contracted for by the employer for the business of work process in which the employer is then engaged: *Provided*, That if a workman by reason of his employment leaves such jobsite under the direction, control or request of the employer and if such workman is injured during his lunch period while so away from the jobsite, the workman shall receive the benefits as provided herein: *And provided further*, That the employer need not consider the lunch period in workman hours for the purpose of reporting to the department unless the workman is actually paid for such period of time. [1961 c 107 § 2.]

Reviser's note: Compare the second sentence of RCW 51.32.015 wherein the phrase "business or work process" is used.

51.36.050 Rehabilitation center—Contracts with self-insurers. The department may operate and control a rehabilitation center and may contract with self-insurers for use of any such center on such terms as the director deems reasonable. [1971 ex.s. c 289 § 52.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.36.060 Duties of attending physician—Medical information. Physicians attending injured employees shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department or self-insurer upon the condition or treatment of any injured employee, or upon any other matters concerning injured employees in their care. All medical information in the possession or control of any person and relevant to the particular injury shall be available to the employer and the department, and no person shall incur any legal liability by reason of releasing such information. [1971 ex.s. c 289 § 53.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.36.070 Medical examination—Reports—Costs. Whenever the director or the self-insurer deems it necessary in order to resolve any medical issue, a workman shall submit to examination by a physician or physicians selected by the director, with the rendition of a report to the person ordering the examination. The director, in his discretion, may charge the cost of such examination or examinations to the self-insurer or to the medical aid fund as the case may be. The cost of said examination shall include payment to the workman of reasonable expenses connected therewith. [1971 ex.s. c 289 § 54.]

~~Effective date—Severability—1971 ex.s. c 289:~~ See RCW 51-98.060 and 51.98.070.

51.36.080 Fees and medical charges. All fees and medical charges under this title shall conform to regulations promulgated by the director. [1971 ex.s. c 289 § 55.]

~~Effective date—Severability—1971 ex.s. c 289:~~ See RCW 51-98.060 and 51.98.070.

**Chapter 51.40
MEDICAL AID CONTRACTS**

Sections

- 51.40.010 Medical aid contracts authorized.
- 51.40.020 Contract approval.
- 51.40.030 Provisions made inapplicable where contract exists.
- 51.40.040 Provision for medical aid when contract service ended.
- 51.40.050 Complaint of the contract service.
- 51.40.060 Adequate treatment when contract treatment deficient.
- 51.40.070 Transfer from contract doctor.

51.40.010 Medical aid contracts authorized. Any contract made in violation of this title shall be invalid, except that any employer engaged in extrahazardous work may, with the consent of a majority of his workmen, enter into written contracts with physicians, surgeons and owners of hospitals operating the same, or with hospital associations, for medical, surgical and hospital care to workmen injured in such employment, by, and under the control and administration of, and at the direct expense of the employer and his workmen. Such a contract shall be known as a "medical aid contract" and shall not be assignable or transferable by operation of law or otherwise except with the consent of the supervisor of industrial insurance endorsed thereon. [1961 c 23 § 51.40.010. Prior: 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

51.40.020 Contract approval. Before any medical aid contract shall go into effect it shall be submitted to the supervisor of industrial insurance and may be disapproved by him when found not to provide for such care of injured workmen as is contemplated by the provisions of RCW 51.04.030 and, if a contract so submitted is with the owners of a hospital operating the same, or with a hospital association, the supervisor of industrial insurance shall have power to disapprove the same if in his judgment the ownership or management of such hospital or hospital association is not such as to produce satisfactory service. Any such contract with physician, surgeon, or owner and operator of a hospital, or with a hospital association, so disapproved shall not be valid. If approved the contract shall be in effect for any period of time specified therein, not exceeding three years from the date of approval: *Provided*, That the director, through the division of industrial insurance, may, before approving any such contract, require the giving by any physician, surgeon, hospital or hospital association, of a bond in such sum and in such form, as the director may determine, conditioned that the obligor will faithfully perform such contract. Every such contract to be valid must provide the injured workman

the same services and a standard of service equal to that provided by the department for noncontract cases: *Provided*, That the contract shall provide for the payment of fees to licensed practitioners of the healing arts that are not members of the medical contracting group but who render services to a contract-covered employee. Such fees shall not exceed the agreed fee schedule of the medical contracting group and said fees shall be subject to the proration of payments on the same basis as the medical aid contracting group and any such practitioner participating in the agreement of any contract-covered employee shall agree to render similar services in the event of a catastrophe and to accept a proration of payments on the same basis as the medical contracting group. Every such contract to be valid must provide that the expenses incident to it shall be borne one-half by the employer and one-half by the employees, and that it shall be administered by the two interests jointly and equally.

No contract entered into prior to the time chapter 36, Laws of 1965 goes into effect shall be invalidated during its term by anything contained in the amendatory provisions of said chapter 36, Laws of 1965. [1965 ex.s. c 80 § 2; 1965 c 36 § 1; 1961 c 23 § 51.40.020. Prior: 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

Reviser's note: 1965 c 36 § 1 (subsequently amended by 1965 ex.s. c 80 § 2) added to the first paragraph of the above section the 4th and 5th sentences thereof.

51.40.030 Provisions made inapplicable where contract exists. So long as a medical aid contract is in effect the subject matter of the contract shall, except as in this chapter otherwise specified, be outside of, and not affected by the provisions relating to the assessment and payment of medical aid premiums, but the provisions relating to artificial substitutes and lenses and the basis of compensation when lenses are supplied, and to transportation of injured workmen and to educational standards of safety shall apply. [1961 c 23 § 51.40.030. Prior: 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

51.40.040 Provision for medical aid when contract service ended. The employer shall pay monthly into the medical aid fund ten percent of the amount he would have been required to pay in that month if such contract had not been made, and of that ten percent he shall collect one-half from his said workmen by proper deduction from the daily wage of each and, in addition thereto, every classification and subclassification of industries whose employer and employees are under medical aid contract, shall pay into the surplus fund hereby created a further sum to be determined by the director, through the division of industrial insurance, not exceeding ten percent of the amount that would have been required to be paid into the medical aid fund if such contract had not been made and the employer shall collect such sum from the party agreeing to furnish such medical aid and hospital service. The surplus

fund shall be used by the director only for the purpose of furnishing medical aid to workmen included in the contract provided for in this section, where the necessity therefor arises after the expiration or cancellation of such medical aid contract, in those instances where the medical aid contractor has become deceased, insolvent, dissolved or, in the opinion of the director, otherwise incapable of rendering the required medical aid to the injured workmen. The amount at which such surplus fund shall be maintained in each classification and subclassification shall be determined by the director, through the division of industrial insurance, based upon the estimated costs of such future medical treatment required to be furnished after the expiration or cancellation of the medical aid contract, except as in this chapter provided. When adequate reserves for such purpose have been accumulated to the credit of any classification and subclassification the levy therefor may be suspended in the discretion of the director. Disbursements from said surplus fund shall be made by warrants drawn against the same by the department upon certificate thereof, or requisition therefor through the division of industrial insurance. Payment into the surplus fund shall not relieve the party agreeing to furnish such medical aid and hospital service from his obligation so to do at any time during or after the expiration of his medical aid contract except as in this section provided: *Provided*, That if, upon the expiration of any medical aid contract, the medical aid contractor does not renew it and forthwith and thereafter ceases the performance of all medical aid contracts as in this chapter provided, he shall be relieved from all liability to furnish future medical aid to the injured workman arising after the expiration of such contract or contracts, if he has paid all levies theretofore made during the existence of such contract or contracts into the surplus fund. [1973 c 106 § 29; 1961 c 23 § 51.40.040. Prior: 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

51.40.050 Complaint of the contract service. During the operation of any contract the supervisor of industrial insurance, on his own motion, or any interested person, may file a complaint alleging that the service and care actually rendered thereunder are not up to the standard provided in RCW 51.04.030 and, upon a hearing had upon notice to the employer and workmen interested thereunder, the supervisor of industrial insurance may make an order that the contract shall terminate unless the defect or deficiency complained of is remedied to his satisfaction within a period to be fixed in such order, or he may at such hearing sustain the complaint and make an order that the contract shall terminate forthwith.

Notice to the workmen may be effected by service upon one of them designated by a majority of the workmen, in writing in duplicate, one copy to be posted for local convenience and the other filed with the supervisor of industrial insurance. In default of any such designation, service upon any one workman other than the one instituting a complaint shall be service upon all.

During an appeal the contract shall remain in force and operation, but the costs of the appeal shall be paid out of the medical aid fund only in case the decision of the supervisor of industrial insurance is reversed. [1961 c 23 § 51.40.050. Prior: 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

51.40.060 Adequate treatment when contract treatment deficient. If, during the operation of any medical aid contract, any injured workman shall not receive medical or surgical treatment with reasonable promptness upon the occurrence of his injury, or at any time during his treatment, the supervisor of industrial insurance may provide such treatment during the emergency at the expense of his employer, who may charge such expense against such contract, and such emergency treatment shall continue until supplanted by like treatment under such contract, notwithstanding the pendency of an appeal from such action. The cost of such emergency treatment shall not exceed the rate specified in the department's fee bill. The acceptance of employment by any workman shall be and be held to be an acceptance of any existing contract made under this chapter to which his employer is a party. [1961 c 23 § 51.40.060. Prior: 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

51.40.070 Transfer from contract doctor. The director shall have power to enact rules prescribing whether and under what conditions an injured workman, who has been receiving treatment under medical aid contract at a place other than his place of permanent abode and who shall be or have become ambulatory or who, being discharged, shall require further treatment, may be transferred to the care of a surgeon at his place of residence, and providing for the compensation of such surgeon at the expense of the doctor, hospital or hospital association holding such contract. [1961 c 23 § 51.40.070. Prior: 1959 c 256 § 5; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

~~Saving—Severability—Repeal and saving—Effective date—~~
1923 c 136: See notes following RCW 51.04.030.

Chapter 51.44 FUNDS

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 51.44.160 Interfund loans between reserve and supplemental pension funds—Audit.

51.44.010 Accident fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "accident fund." [1961 c 23 § 51.44.010. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

51.44.020 Medical aid fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "medical aid fund." [1961 c 23 § 51.44.020. Prior: 1923 c 136 § 8, part; 1919 c 129 § 1, part; 1917 c 29 § 4, part; RRS § 7713, part.]

Saving—Severability—Repeal and saving—Effective date—1923 c 136: See notes following RCW 51.04.030.

51.44.030 Reserve fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "reserve fund." [1961 c 23 § 51.44.030. Prior: 1957 c 70 § 39; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.033 Supplemental pension fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "supplemental pension fund". The director shall be the administrator thereof. Said fund shall be used for the sole purpose of making the additional payments prescribed in RCW 51.32.070. [1971 ex.s. c 289 § 18.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.034 Supplemental pension fund—Transfer of remaining moneys and liabilities to fund. Any moneys remaining from funds appropriated by the legislature for the purposes of making additional payments to prior pensioners under prior provisions of RCW 51.32.070, and any liabilities in connection therewith, are transferred to the supplemental pension fund on July 1, 1971. [1971 ex.s. c 289 § 19.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.040 Second injury fund. (1) There shall be in the office of the state treasurer, a fund to be known and designated as the "second injury fund", which shall be used only for the purpose of defraying charges against it as provided in RCW 51.16.120. Said fund shall be administered by the director. The state treasurer shall be the custodian of the second injury fund and shall be

authorized to disburse moneys from it only upon written order of the director.

(2) Payments to the second injury fund from the accident fund shall be made pursuant to rules and regulations promulgated by the director. [1972 ex.s. c 43 § 27; 1961 c 23 § 51.44.040. Prior: 1959 c 308 § 17; 1947 c 183 § 1; 1945 c 219 § 2; Rem. Supp. 1947 § 7676-1b.]

51.44.050 Catastrophe injury account. There shall be a special account within the accident fund to be known as the "catastrophe injury account" which shall be used only for the purpose of defraying charges against it as provided in RCW 51.16.130. [1961 c 23 § 51.44.050. Prior: 1959 c 308 § 6; 1957 c 70 § 40; prior: 1947 c 247 § 1(4f), part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.44.060 Charge to accident fund for the catastrophe injury account. The charge to the accident fund to defray charges against the catastrophe injury account shall be made pursuant to rules and regulations promulgated by the director. [1972 ex.s. c 43 § 28; 1961 c 23 § 51.44.060. Prior: 1959 c 308 § 7; 1957 c 70 § 41; prior: 1947 c 247 § 1(4f), part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.44.070 Transfer from accident fund, accounts to reserve fund—Annuity values—Self-insurer payments to fund. For every case resulting in death or permanent total disability the department shall transfer on its books from the accident fund of the proper class and/or appropriate account to the "reserve fund" a sum of money for that case equal to the estimated present cash value of the monthly payments provided for it, to be calculated upon the basis of an annuity covering the payments in this title provided to be made for the case. Such annuity values shall be based upon rates of mortality, disability, remarriage, and interest as determined by the state insurance commissioner, taking into account the experience of the reserve fund in such respects.

Similarly, a self-insurer in these circumstances shall pay into the reserve fund a sum of money computed in the same manner, and the disbursements therefrom shall be made as in other cases. [1971 ex.s. c 289 § 56; 1961 c 274 § 5; 1961 c 23 § 51.44.070. Prior: 1959 c 308 § 8; 1957 c 70 § 42; prior: 1951 c 263 § 7; 1941 c 169 § 1; Rem. Supp. 1941 § 7705-2; prior: 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.080 Reserve fund—Transfers from state fund—Surplus—Deficiency. The department shall notify the state treasurer from time to time, of such transfers as a whole from the state fund to the reserve fund and the interest or other earnings of the reserve fund shall become a part of the reserve fund itself. As soon as possible after June 30th of each year the state insurance commissioner shall expert the reserve fund to

ascertain its standing as of June 30th of that year and the relation of its outstanding annuities at their then value on the bases currently employed for new cases to the cash on hand or at interest belonging to the fund. He shall promptly report the result of his examination to the department and to the state treasurer in writing not later than September 30th following. If the report shows that there was on said June 30th, in the reserve fund in cash or at interest, a greater sum than the then annuity value of the outstanding pension obligations, the surplus shall be forthwith turned over to the state fund but, if the report shows the contrary condition of the reserve fund, the deficiency shall be forthwith made good out of the state fund. [1972 ex.s. c 43 § 29; 1971 ex.s. c 289 § 57; 1961 c 23 § 51.44.080. Prior: 1957 c 70 § 43; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.090 Reserve fund record and maintenance by state treasurer. The state treasurer shall keep accurate accounts of the reserve fund and the investment and earnings thereof, to the end that the total reserve fund shall at all times, as nearly as may be, be properly and fully invested and, to meet current demands for pension or lump sum payments, may, if necessary, make temporary loans to the reserve fund out of the accident fund, repaying the same from the earnings of the reserve fund or from collections of its investments or, if necessary, sales of the same. [1972 ex.s. c 43 § 31; 1961 c 23 § 51.44.090. Prior: 1957 c 70 § 44; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.100 Investment of accident, medical aid, reserve funds. Whenever, in the judgment of the state finance committee, there shall be in the accident fund, medical aid fund, or in the reserve fund, funds in excess of that amount deemed by such committee to be sufficient to meet the current expenditures properly payable therefrom, the committee may invest and reinvest such excess funds in the manner prescribed by RCW 43.84-.150, and not otherwise.

The state finance committee may give consideration to the investment of excess funds in federally insured student loans made to persons in vocational training or retraining or reeducation programs. The state finance committee may make such investments by purchasing from savings and loan associations, commercial banks, mutual savings banks, credit unions and other institutions authorized to be lenders under the federally insured student loan act, organized under federal or state law and operating in this state loans made by such institutions to residents of the state of Washington particularly for the purpose of vocational training or reeducation: *Provided*, That the state finance committee shall purchase only that portion of any loan which is guaranteed or insured by the United States of America,

or by any agency or instrumentality of the United States of America: *Provided further*, That the state finance committee is authorized to enter into contracts with such savings and loan associations, commercial banks, mutual savings banks, credit unions, and other institutions authorized to be lenders under the federally insured student loan act to service loans purchased pursuant to this section at an agreed upon contract price. [1973 1st ex.s. c 103 § 6; 1972 ex.s. c 92 § 2; 1965 ex.s. c 41 § 1; 1961 c 281 § 10; 1961 c 23 § 51.44.100. Prior: 1959 c 244 § 1; 1935 c 90 § 1; RRS § 7705-1.]

Severability—1973 1st ex.s. c 103: See note following RCW 2.10.080.

Legislative finding, purpose—1972 ex.s. c 92: "The legislature finds that the accident fund, medical aid fund and reserve funds could be invested in such a manner as to promote vocational training and retraining or reeducation among the workers of this state. The legislature recognizes that federally insured student loans are already available to students at institutions of higher education. The legislature declares that the purpose of this 1972 amendatory act is to encourage the state finance committee to consider making some investment funds available for investment in federally insured student loans made to persons enrolled in vocational training and retraining or reeducation programs." [1972 ex.s. c 92 § 1.] This applies to the 1972 amendment to the above section.

Motor vehicle fund warrants for state highway acquisition: RCW 47-12.180-47.12.240.

Student loans: RCW 28B.10.280.

Uniform minor student capacity to borrow act: Chapter 26.30 RCW.

Vocational education: Chapter 28A.09 RCW.

Vocational rehabilitation: Chapter 28A.10 RCW.

51.44.110 Disbursements of funds. Disbursement out of the several funds shall be made only upon warrants drawn by the department. The state treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant is drawn where-with to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same, and he shall be credited upon his next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable and, if the amount of the credit shall exceed the amount of the contribution, he shall have a warrant upon the same fund for the excess and, if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. [1973 c 106 § 30; 1961 c 23 § 51.44.110. Prior: 1911 c 74 § 26, part; RRS § 7705, part.]

51.44.120 Liability of state treasurer. The state treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the several funds, but all of the provisions of law relating to state depositaries and to the deposit of state moneys therein shall apply to the several funds and securities. [1961 c 23 § 51.44.120. Prior: (i) 1911 c 74 § 26, part; RRS § 7705, part. (ii) 1917 c 28 § 14; RRS § 7723.]

51.44.140 Self-insurer to make deposits into reserve fund—Accounts within fund—Surpluses and deficits. Each self-insurer shall make such deposits, into the reserve fund, as the department shall require pursuant to

RCW 51.44.070, as are necessary to guarantee the payments of the pensions established pursuant to RCW 51.32.050 and 51.32.060.

Each self-insurer shall have an account within the reserve fund. Each such account shall be credited with its proportionate share of interest or other earnings as determined in RCW 51.44.080.

Each such account in the reserve fund shall be expeted by the insurance commissioner as required in RCW 51.44.080. Any surpluses shall be forthwith returned to the respective self-insurers, and each deficit shall forthwith be made good to the reserve fund by the self-insurer. [1972 ex.s. c 43 § 30; 1971 ex.s. c 289 § 58.]

51.44.150 Assessments upon self-insurers for administration costs. The director shall impose and collect assessments each fiscal year upon all self-insurers in the amount of the estimated costs of administering their portion of this title during such fiscal year. The time and manner of imposing and collecting assessments due the department shall be set forth in regulations promulgated by the director in accordance with chapter 34.04 RCW. [1971 ex.s. c 289 § 59.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.160 Interfund loans between reserve and supplemental pension funds—Audit. The director is authorized to make periodic temporary interfund transfers between the reserve and supplemental pension funds as may be necessary to provide for payments as prescribed in RCW 51.32.070. At least once annually, the director shall cause an audit to be made of all pension funds administered by the department to insure that proper crediting of funds has been made, and further to direct transfers between the funds for any interfund loans which may have been made in the preceding year and not fully reimbursed. [1971 ex.s. c 289 § 60.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Chapter 51.48 PENALTIES

Sections

- 51.48.010 Employer's liability for penalties, injury or disease occurring prior to time payment of compensation secured.
- 51.48.015 Employer's failure to secure payment of compensation.
- 51.48.017 Self-insurer delaying or refusing to pay benefits.
- 51.48.020 Employer's misrepresentation.
- 51.48.030 Failure to keep records and make reports.
- 51.48.040 Inspection of employer's records.
- 51.48.050 Liability for illegal collections for medical aid.
- 51.48.060 Physician, failure to report or comply with title—Penalty.
- 51.48.070 Employer's responsibility for safeguard.
- 51.48.080 Violation of rules.
- 51.48.090 Collection of penalties.
- 51.48.100 Waiver of penalties.
- 51.48.105 Penalties for failure to apply for coverage of employees—Not applicable, when.
- 51.48.110 Decedent having no beneficiaries—Payment into supplemental pension fund.
- 51.48.120 Notice of assessment for default in payments by employer—Issuance—Service—Contents.

- 51.48.130 Notice of assessment for default in payments by employer—Appeal to superior court—Bond—Trial—Appeal to court of appeals or supreme court.
- 51.48.140 Notice of assessment for default in payments by employer—When amount becomes final—Warrant—Execution—Garnishment—Fees.
- 51.48.150 Notice of assessment for default in payments by employer—Notice to withhold and deliver property due employer.

51.48.010 Employer's liability for penalties, injury or disease occurring prior to time payment of compensation secured. Every employer shall be liable for the penalties described in this title and shall also be liable if an injury or occupational disease has been sustained by a workman prior to the time he has secured the payment of such compensation to a penalty in a sum equal to fifty percent of the cost for such injury or occupational disease, for the benefit of the medical aid fund. [1971 ex.s. c 289 § 61; 1961 c 23 § 51.48.010. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.015 Employer's failure to secure payment of compensation. Any employer who engages in work who has wilfully failed to secure the payment of compensation under this title shall be guilty of a misdemeanor. Violation of this section is punishable, upon conviction, by a fine of not less than twenty-five dollars nor more than one hundred dollars. Each day such person engages as a subject employer in violation of this section constitutes a separate offense. Any fines paid pursuant to this section shall be paid directly by the court to the director for deposit in the medical aid fund. [1971 ex.s. c 289 § 62.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.017 Self-insurer delaying or refusing to pay benefits. If a self-insurer unreasonably delays or refuses to pay benefits as they become due there shall be paid by the self-insurer upon order of the director an additional amount equal to twenty-five percent of the amount then due which shall accrue for the benefit of the claimant and shall be paid to him with the benefits which may be assessed under this title. Such an order shall conform to the requirements of RCW 51.52.050. [1971 ex.s. c 289 § 66.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.020 Employer's misrepresentation. Any employer, who misrepresents to the department the amount of his payroll upon which the premium under this title is based, shall be liable to the state in ten times the amount of the difference in premiums paid and the amount the employer should have paid and for the reasonable expenses of auditing his books and collecting such sums. Such liability may be enforced in the name of the department. Such an employer shall also be guilty of a misdemeanor if such misrepresentations are

made knowingly. [1971 ex.s. c 289 § 63; 1961 c 23 § 51.48.020. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

~~Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.~~

51.48.030 Failure to keep records and make reports. Every employer who fails to keep the records required by this title or fails to make the reports provided in this title shall be subject to a penalty of not to exceed one hundred dollars for each such offense. [1971 ex.s. c 289 § 64; 1961 c 23 § 51.48.030. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

~~Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.~~

51.48.040 Inspection of employer's records. The books, records and payrolls of the employer pertinent to the administration of this title shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the men employed, and such other information as may be necessary for the department and its management under this title. Refusal on the part of the employer to submit his books, records and payrolls for such inspection to the department, or any assistant presenting written authority from the director, shall subject the offending employer to a penalty of one hundred dollars for each offense and the individual who personally gives such refusal shall be guilty of a misdemeanor. [1961 c 23 § 51.48.040. Prior: 1911 c 74 § 15, part; RRS § 7690, part.]

51.48.050 Liability for illegal collections for medical aid. It shall be unlawful for any employer to directly or indirectly demand or collect from any of his workmen any sum of money whatsoever for or on account of medical, surgical, hospital, or other treatment or transportation of injured workmen, other than as specified in RCW 51.16.140 and 51.40.040, and any employer who directly or indirectly violates the foregoing provisions of this section shall be liable to the state for the benefit of the medical aid fund in ten times the amount so demanded or collected, and such employer and every officer, agent, or servant of such employer knowingly participating therein shall also be guilty of a misdemeanor. [1961 c 23 § 51.48.050. Prior: 1917 c 28 § 17; RRS § 7726.]

51.48.060 Physician, failure to report or comply with title—Penalty. Any physician who fails, neglects or refuses to file a report with the director, as required by this title, within five days of the date of treatment, showing the condition of the injured workman at the time of treatment, a description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured workman, as required by this title, shall be subject to a civil penalty of one hundred dollars. [1971 ex.s. c 289 § 20; 1961 c 23 § 51.48.060. Prior: 1927 c 310 § 6(e), part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686(e), part.]

~~Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.~~

51.48.070 Employer's responsibility for safeguard. If any workman is injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any departmental regulation under any statute, or is, at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he is engaged when injured the employer shall, within ten days after the demand therefor by the department, pay into the accident fund in addition to all other payments required by law:

(1) In case the consequent payment to the workman out of the accident fund is a lump sum, a sum equal to fifty percent of that amount.

(2) In case the consequent payment to the workman is payable in monthly payments, a sum equal to fifty percent of the lump value of such monthly payment, estimated in accordance with the rule stated in RCW 51.32.130.

The foregoing provisions shall not apply to the employer if the absence of such guard or protection is due to the removal thereof by the injured workman himself or with his knowledge by any of his fellow workmen, unless such removal is by order or direction of the employer or superintendent or foreman of the employer, or anyone placed by the employer in control or direction of such workman. If the removal of such guard or protection is by the workman himself or with his consent by any of his fellow workmen, unless by order or direction of the employer or the superintendent or foreman of the employer, or anyone placed by the employer in control or direction of such workman, the schedule of compensation provided in chapter 51.32 RCW shall be reduced ten percent for the individual case of such workman. [1961 c 23 § 51.48.070. Prior: 1911 c 74 § 9; RRS § 7683.]

51.48.080 Violation of rules. Every person, firm or corporation who violates or fails to obey, observe or comply with any rule of the department promulgated under authority of this title, shall be subject to a penalty of not to exceed two hundred and fifty dollars. [1961 c 23 § 51.48.080. Prior: 1915 c 188 § 8; RRS § 7704.]

51.48.090 Collection of penalties. Civil penalties to the state under this title shall be collected by civil action in the name of the state and paid into the accident fund unless a different fund is designated. [1961 c 23 § 51.48.090. Prior: (i) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part. (ii) 1911 c 74 § 15, part; RRS § 7690, part. (iii) 1917 c 28 § 17, part; RRS § 7726, part.]

51.48.100 Waiver of penalties. The director may waive the whole or any part of any penalty charged under this title. [1961 c 23 § 51.48.100. Prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part.]

51.48.105 Penalties for failure to apply for coverage of employees—Not applicable, when. The penalties provided under this title for failure to apply for coverage for employees as required by the provisions of Title 51 RCW, the workmen's compensation law, shall not be applicable prior to March 1, 1972, as to any employer whose work first became subject to this title on or after January 1, 1972. [1972 ex.s. c 78 § 1.]

51.48.110 Decedent having no beneficiaries—Payment into supplemental pension fund. Where death results from the injury and the deceased leaves no beneficiaries, a self-insurer shall pay into the supplemental pension fund the sum of ten thousand dollars. [1971 ex.s. c 289 § 65.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

51.48.120 Notice of assessment for default in payments by employer—Issuance—Service—Contents. If any employer should default in any payment due to the state fund the director or his designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by registered mail to his last known address, accompanied by an affidavit of service by mailing, or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that a petition for review must be filed with the superior court within thirty days of the date of service of the notice of assessment. [1972 ex.s. c 43 § 32.]

51.48.130 Notice of assessment for default in payments by employer—Appeal to superior court—Bond—Trial—Appeal to court of appeals or supreme court. Any employer who is served with a notice of assessment may within thirty days from the date of service upon the employer of the notice of assessment appeal such notice of assessment by serving the director by registered mail with a petition for review and file the same with the clerk of the superior court of the county wherein the work covered by the provisions of the industrial insurance act was performed. Such petition shall set forth the reasons why the tax should be reduced or abated. Within ten days after the filing of the petition for review the employer shall file with the clerk a good and sufficient surety bond in the sum of one hundred dollars, conditioned to diligently prosecute the appeal and pay all the department's costs that may be awarded if the appeal of the employer is not sustained.

The trial in the superior court on appeal shall be de novo and without the necessity of any pleading other than the petition for review, and the burden of proof shall rest upon the employer to prove that the tax assessed upon the employer in the notice of assessment is incorrect, either in whole or in part, and to establish the correct amount of the tax, if any. In such proceeding the employer shall be deemed the plaintiff and the department of labor and industries the defendant; and both parties shall be entitled to subpoena the attendance of witnesses as in other civil actions and to

produce evidence that is relevant, competent and material to determine the correct amount of the tax. Either party shall be allowed to appeal to the court of appeals or the supreme court in the same manner as other civil actions are appealed to those courts. No court action or proceeding shall be maintained by any employer to dispute the amount of notice of assessment except as herein provided. [1972 ex.s. c 43 § 33.]

51.48.140 Notice of assessment for default in payments by employer—When amount becomes final—Warrant—Execution—Garnishment—Fees. If a petition for review is not filed with the clerk of the superior court and served upon the director within thirty days from the date of service of the notice of assessment, as indicated in the affidavit of service by mailing of the department, or in the event of a final decree of any court in favor of the department in a petition for review, which is not appealed within the time allowed by law, the amount of the notice of assessment shall be deemed final and established and the director or his designee may file with the clerk of any county within the state a warrant in the amount of the notice of assessment. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such employer mentioned in the warrant, the amount of the taxes and penalties due thereon, and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the employer within three days of filing with the clerk. [1972 ex.s. c 43 § 34.]

51.48.150 Notice of assessment for default in payments by employer—Notice to withhold and deliver property due employer. The director or his designee is hereby authorized to issue to any person, firm, corporation, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or any agency of the state, property which is due, owing, or belonging to any employer upon whom a notice of assessment has been

served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by his deputy, or by any duly authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation or any agency of the state upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or his duly authorized representative upon demand to be held in trust by the director for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review, or in the alternative such party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. Should any party served and named in the notice to withhold and deliver fail to make answer to such notice and order to withhold and deliver, within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the director in the notice to withhold and deliver together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, then the employer shall be entitled to assert in the answer to all exemptions provided for by chapter 7.33 RCW to which the wage earner may be entitled. [1972 ex.s. c 43 § 35.]

Chapter 51.52 APPEALS

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51.52.010 Board of industrial insurance appeals. There shall be a "board of industrial insurance appeals," hereinafter called the "board," consisting of three members appointed by the governor as hereinafter provided. One shall be a representative of the public and a lawyer, appointed from a mutually agreed to list of not less than three active members of the Washington state bar association, submitted to the governor by the two organizations defined below, and such member shall be the chairman of said board. The second member shall be a representative of the majority of workmen engaged in employment under this title and selected from a list of not less than three names submitted to the governor by an organization, state-wide in scope, which through its affiliates embraces a cross section and a majority of the organized labor of the state. The third member shall be a representative of employers under this title, and appointed from a list of at least three names submitted to the governor by a recognized state-wide organization of employers, representing a majority of employers. The initial terms of office of the members of the board shall be for six, four, and two years respectively. Thereafter all terms shall be for a period of six years. Each member of the board shall be eligible for reappointment and shall hold office until his successor is appointed and qualified. In the event of a vacancy the governor is authorized to appoint a successor to fill the unexpired term of his predecessor. All appointments to the board shall be made in conformity with the foregoing plan. Whenever the workload of the board and its orderly and expeditious disposition shall necessitate, the governor may appoint two additional pro-tem members in addition to the regular members. Such appointments shall be for a definite period of time, and shall be made from lists submitted respectively by labor and industry as in the case of regular members. One pro-tem member shall be a representative of labor and one shall be a representative of industry. Members shall devote their entire time to the duties of the board and shall receive for their services a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 which shall be in addition to reasonable travel allowance. Headquarters for the board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized. [1971 ex.s. c 289 § 68; 1965 ex.s. c 165 § 3; 1961 c 307 § 8; 1961 c 23 § 51.52.010. Prior: 1951 c 225 § 1; prior: 1949 c 219 § 2; Rem. Supp. 1949 § 10837-1.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.020 Board—Rule making power. The board may make rules and regulations concerning its functions and procedure, which shall have the force and effect of law until altered, repealed, or set aside by the board: *Provided*, That the board may not delegate to any other person its duties of interpreting the testimony and making the final decision and order on appeal

cases. All rules and regulations adopted by the board shall be printed and copies thereof shall be readily available to the public. [1961 c 23 § 51.52.020. Prior: 1951 c 225 § 2; prior: 1949 c 219 § 3, part; Rem. Supp. 1949 § 10837-2, part.]

51.52.030 Board—Expenses. The board may incur such expenses as are reasonably necessary to carry out its duties hereunder, which expenses shall be paid, one-half from the accident fund and one-half from the medical aid fund upon vouchers approved by the board. [1961 c 23 § 51.52.030. Prior: 1951 c 225 § 3; prior: 1949 c 219 § 3, part; Rem. Supp. 1949 § 10837-2, part.]

51.52.040 Board—Removal of member. Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit the original of such written charges to the chief justice of the supreme court and a copy thereof to the member accused. The chief justice shall thereupon designate a special tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time, place and procedure for the hearing, and the hearing shall be public. The decision of such tribunal shall be final and not subject to review. [1961 c 23 § 51.52.040. Prior: 1951 c 225 § 4; prior: 1949 c 219 § 4; Rem. Supp. 1949 § 10837-3.]

51.52.050 Copy of department action to be served—Appeal. Whenever the department has made any order, decision, or award, it shall promptly serve the workman, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, which shall be addressed to such person at his last known address as shown by the records of the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award must be appealed to the board, Olympia, within sixty days, or the same shall become final.

Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the workman, beneficiary, employer, or other person aggrieved thereby may appeal to the board and any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter. [1961 c 23 § 51.52.050. Prior: 1957 c 70 § 55; 1951 c 225 § 5; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1947 c 247 § 1, part; 1911 c 74 § 20, part; Rem. Supp. 1947 § 7676e, part. (iii) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (iv) 1923 c 136 § 7, part; 1921 c 182 § 10, part; 1917 c 29 § 3, part; RRS § 7712, part. (v) 1917 c 29 §

11; RRS § 7720. (vi) 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

~~Saving—Severability—Repeal and saving—Effective date—~~
1923 c 136: See notes following RCW 51.04.030.

51.52.060 Notice of appeal—Time—Cross-appeal—Department may modify, reverse, etc.—Denial of appeal without prejudice. Any workman, beneficiary, employer, or other person aggrieved by an order, decision, or award of the department must, before he appeals to the courts, file with the board and the director, by mail or personally, within sixty days from the day on which such copy of such order, decision, or award was communicated to such person, a notice of appeal to the board. Within ten days of the date on which an appeal has been granted by the board, the board shall notify the other interested parties thereto of the receipt thereof and shall forward a copy of said notice of appeal to such other interested parties. Within twenty days of the receipt of such notice of the board, the workman or the employer may file with the board a cross-appeal from the order of the department from which the original appeal was taken: *Provided*, That nothing contained in this section shall be deemed to change, alter or modify the practice or procedure of the department for the payment of awards pending appeal: *And provided*, That failure to file notice of appeal with both the board and the department shall not be ground for denying the appeal if the notice of appeal is filed with either the board or the department: *And provided*, That, if within the time limited for filing a notice of appeal to the board from an order, decision, or award of the department, the department shall direct the submission of further evidence or the investigation of any further fact, the time for filing such notice of appeal shall not commence to run until such person shall have been advised in writing of the final decision of the department in the matter: *Provided, further*, That the department, either within the time limited for appeal, or within thirty days after receiving a notice of appeal, may modify, reverse or change any order, decision, or award, or may hold any such order, decision, or award in abeyance pending further investigation in light of the allegations of the notice of appeal, and the board shall thereupon deny the appeal, without prejudice to the appellant's right to appeal from any subsequent determinative order issued by the department. [1963 c 148 § 1; 1961 c 274 § 8; 1961 c 23 § 51.52.060. Prior: 1957 c 70 § 56; 1951 c 225 § 6; prior: 1949 c 219 §§ 1, part, 6, part; 1947 c 246 § 1, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 §§ 2, part, 6, part; 1927 c 310 §§ 4, part, 8, part; 1923 c 136 § 2, part; 1919 c 134 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 §§ 5, part, 20, part; Rem. Supp. 1949 §§ 7679, part, 7697, part.]

51.52.070 Contents of notice—Transmittal of record. The notice of appeal to the board shall set forth in full detail the grounds upon which the person appealing considers such order, decision, or award is unjust or unlawful, and shall include every issue to be

considered by the board, and it must contain a detailed statement of facts upon which such workman, beneficiary, employer, or other person relies in support thereof. The workman, beneficiary, employer, or other person shall be deemed to have waived all objections or irregularities concerning the matter on which such appeal is taken other than those specifically set forth in such notice of appeal or appearing in the records of the department. The department shall promptly transmit its original record in such matter to the board. [1961 c 23 § 51.52.070. Prior: 1957 c 70 § 57; 1951 c 225 § 7; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

51.52.080 Appeal to board denied, when. If the notice of appeal raises no issue or issues of fact and the board finds that the department properly and lawfully decided all matters raised by such appeal it may, without further hearing, deny the same and confirm the department's decision or award, or if the department's record sustains the contention of the person appealing to the board, it may, without further hearing, allow the relief asked in such appeal; otherwise, it shall grant the appeal. [1971 ex.s. c 289 § 69; 1963 c 148 § 2; 1961 c 23 § 51.52.080. Prior: 1957 c 70 § 58; 1951 c 225 § 8; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.090 Appeal to board deemed granted, when. If the appeal is not denied within thirty days after the notice is filed with the board, the appeal shall be deemed to have been granted: *Provided*, That the board may extend the time within which it may act upon such appeal, not exceeding thirty days. [1971 ex.s. c 289 § 70; 1961 c 23 § 51.52.090. Prior: 1957 c 70 § 59; 1951 c 225 § 9; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.095 Conference for disposal of matters involved in appeal. The board, upon request of the workman, beneficiary, or employer, or upon its own motion, may direct all parties interested in an appeal, together with their attorneys, if any, to appear before it, a member of the board, or an authorized hearing examiner, for a conference for the purpose of determining the feasibility of settlement, the simplification of issues of law and fact, the necessity of amendments to the notice of appeal or other pleadings, the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, the limitation of the number of expert witnesses, and such other matters as may aid in the disposition of the appeal. Such conference may be held prior to the hearing, or it may be held during the hearing, at the discretion of the board member or hearing

examiner conducting the same, in which case the hearing will be recessed for such conference. Following the conference, the board member or hearing examiner conducting the same, shall state on the record the results of such conference, and the parties present or their representatives shall state their concurrence on the record. Such agreement as stated on the record shall control the subsequent course of the proceedings, unless modified at a subsequent hearing to prevent manifest injustice. If agreement concerning final disposition of the appeal is reached by the parties present at the conference, or by the employer and workman or beneficiary, the board may enter a final decision and order in accordance therewith, providing the board finds such agreement is in conformity with the law and the facts. [1963 c 148 § 3; 1963 c 6 § 1; 1961 c 23 § 51.52.095. Prior: 1951 c 225 § 10.]

51.52.100 Proceedings before board—Contempt. Hearings shall be held in the county of the residence of the workman or beneficiary, or in the county where the injury occurred, at a place designated by the board. Such hearing shall be de novo and summary, but no witness' testimony shall be received unless he shall first have been sworn to testify the truth, the whole truth and nothing but the truth in the matter being heard, or unless his testimony shall have been taken by deposition according to the statutes and rules relating to superior courts of this state. The department shall be entitled to appear in all proceedings before the board and introduce testimony in support of its order. The board shall cause all oral testimony to be stenographically reported and thereafter transcribed, and when transcribed, the same, with all depositions, shall be filed in, and remain a part of, the record on the appeal. Such hearings on appeal to the board may be conducted by one or more of its members, or a duly authorized hearing examiner, and depositions may be taken by a person duly commissioned for the purpose by the board.

Members of the board, its duly authorized hearing examiners, and all persons duly commissioned by it for the purpose of taking depositions, shall have power to administer oaths; to preserve and enforce order during such hearings; to issue subpoenas for, and to compel the attendance and testimony of, witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and it shall be their duty so to do to examine witnesses; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of his office.

If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the board or any member or duly authorized hearing examiner may certify the facts to the

superior court having jurisdiction in the place in which said board or member or hearing examiner is sitting; the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the proceedings, or in the presence, of the court. [1963 c 148 § 4; 1961 c 23 § 51.52.100. Prior: 1957 c 70 § 60; 1951 c 225 § 11; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

51.52.102 Hearing the appeal—Dismissal for failure to present evidence—Evidence—Continuances. At the time and place fixed for hearing each party shall present all his evidence with respect to the issues raised in the notice of appeal, and if any party fails so to do, the board may determine the issues upon such evidence as may be presented to it at said hearing, or if an appealing party who has the burden of going forward with the evidence fails to present any evidence, the board may dismiss the appeal: *Provided*, That for good cause shown in the record to prevent hardship, the board may grant continuances upon application of any party, but such continuances, when granted, shall be to a time and place certain within the county where the initial hearing was held unless it shall appear that a continuance elsewhere is required in justice to interested parties: *And provided further*, That the board may continue hearings on its own motion to secure in an impartial manner such evidence, in addition to that presented by the parties, as the board, in its opinion, deems necessary to decide the appeal fairly and equitably, but such additional evidence shall be received subject to any objection as to its admissibility, and, if admitted in evidence all parties shall be given full opportunity for cross-examination and to present rebuttal evidence. [1963 c 148 § 5; 1961 c 23 § 51.52.102. Prior: 1951 c 225 § 12.]

51.52.104 Hearing examiners—Recommended decision and order—Petition for review—Finality of order not subject to petition for review. After all evidence has been presented at hearings conducted by a hearing examiner, who shall be an active member of the Washington state bar association, the hearing examiner shall enter a proposed or recommended decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The hearing examiner shall file the original of the proposed decision and order, signed by him, with the board, and copies thereof shall be mailed by the board to each party to the appeal and to his attorney of record. Within twenty days, or such further period as the board may allow on written application of a party, filed within said twenty days from the date of communication of the proposed decision and order to the parties or their attorneys of record, any party may file with the board a written petition for review of the same. Such petition

for review shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have waived all objections or irregularities not specifically set forth therein.

In the event no petition for review is filed as provided herein by any party, the proposed decision and order of the hearing examiner shall be adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. [1971 ex.s. c 289 § 22; 1963 c 148 § 6.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.106 Review of decision and order by board. After the filing of a petition or petitions for review as provided for in RCW 51.52.104 the proposed decision and order of the hearing examiner, petition or petitions for review and, in its discretion, the record or any part thereof, may be considered by the board and on agreement of at least two of the regular members thereof, the board may, within twenty days after the receipt of such petition or petitions, decline to review the proposed decision and order and thereupon deny the petition or petitions. In such event all parties shall forthwith be notified in writing of said denial. If the petition for review is granted, the proposed decision and order, the petition or petitions for review and the record or any part thereof deemed necessary shall be considered by a panel of at least two of the members of the board, on which not more than one industry and one labor member serve. The chairman may be a member of any panel. The decision and order of any such panel shall be the decision and order of the board. Every final decision and order rendered by the board shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the board's order based thereon. A copy of the decision and order, including the findings and conclusions, shall be mailed to each party to the appeal and to his attorney of record. [1971 ex.s. c 289 § 23; 1965 ex.s. c 165 § 4; 1963 c 148 § 7; 1961 c 23 § 51.52.106. Prior: 1951 c 225 § 13.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.110 Court appeal—Taking the appeal. Within thirty days after a decision of the board to deny the petition or petitions for review upon such appeal has been communicated to such workman, beneficiary, employer or other person, or within thirty days after the final decision and order of the board upon such appeal has been communicated to such workman, beneficiary, employer or other person, or within thirty days after the appeal is deemed denied as herein provided, such workman, beneficiary, employer or other person aggrieved by the decision and order of the board may appeal to the superior court.

In cases involving injured workmen such appeal shall be to the superior court of the county of residence of the workman or beneficiary, as shown by the department's records, or to the superior court of the county wherein the injury occurred or where neither the county of residence nor the county wherein the injury occurred

are in the state of Washington then the appeal may be directed to the superior court for Thurston county. In all other cases the appeal shall be to the superior court of Thurston county. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director and on the board. If the case is one involving a self-insurer, a copy of the notice of appeal shall also be served by mail, or personally, on such self-insurer. The department shall, in all cases not involving a self-insurer, within twenty days after the receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed at issue. If the case is one involving a self-insurer, such self-insurer shall, within twenty days after receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed to be at issue. In such cases the department may appear and take part in any proceedings. The board shall serve upon the appealing party, the director, the self-insurer if the case involves a self-insurer, and any other party appearing at the board's proceeding, and file with the clerk of the court before trial, a certified copy of the board's official record which shall include the notice of appeal and other pleadings, testimony and exhibits, and the board's decision and order, which shall become the record in such case. No bond shall be required on appeals to the superior court or on appeals to the supreme court or the court of appeals, except that an appeal by the employer from a decision and order of the board under RCW 51.48.070, shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay: *Provided, however,* That whenever the board has made any decision and order reversing an order of the supervisor of industrial insurance on questions of law or mandatory administrative actions of the director, the department shall have the right of appeal to the superior court. [1973 c 40 § 1. Prior: 1972 ex.s. c 50 § 1; 1972 ex.s. c 43 § 36; 1971 ex.s. c 289 § 24; 1971 c 81 § 122; 1961 c 23 § 51.52.110; prior: 1957 c 70 § 61; 1951 c 225 § 14; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

51.52.115 Court appeal—Procedure at trial—Burden of proof. Upon appeals to the superior court only such issues of law or fact may be raised as were properly included in the notice of appeal to the board, or in the complete record of the proceedings before the board. The hearing in the superior court shall be de novo, but the court shall not receive evidence or testimony other than, or in addition to, that offered before the board or included in the record filed by the board in the superior court as provided in RCW 51.52.110: *Provided,* That in cases of alleged irregularities in procedure before the board, not shown in said record, testimony thereon may be taken in the superior court. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had

before judgment is pronounced. In all court proceedings under or pursuant to this title the findings and decision of the board shall be prima facie correct and the burden of proof shall be upon the party attacking the same. If the court shall determine that the board has acted within its power and has correctly construed the law and found the facts, the decision of the board shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the department with an order directing it to proceed in accordance with the findings of the court: *Provided,* That any award shall be in accordance with the schedule of compensation set forth in this title. In appeals to the superior court hereunder, either party shall be entitled to a trial by jury upon demand, and the jury's verdict shall have the same force and effect as in actions at law. Where the court submits a case to the jury, the court shall by instruction advise the jury of the exact findings of the board on each material issue before the court. [1961 c 23 § 51.52.115. Prior: 1957 c 70 § 62; 1951 c 225 § 15; prior: (i) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (ii) 1949 c 219 § 6; 1939 c 184 § 1; Rem. Supp. 1949 § 7697-2.]

51.52.120 Attorney's fee before department or board—Unlawful attorney's fees. (1) It shall be unlawful for an attorney engaged in the representation of any workman or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director for services performed by an attorney for such workman or beneficiary, prior to the notice of appeal to the board if written application therefor is made by the attorney, workman or beneficiary.

(2) If, on appeal to the board, the order, decision or award of the department is reversed or modified and additional relief is granted to a workman or beneficiary, or in cases where a party other than the workman or beneficiary is the appealing party and the workman's or beneficiary's right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his attorney in proceedings before the board if written application therefor is made by the attorney, workman or beneficiary. In fixing the amount of such attorney's fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the department, and the board may review the fee fixed by said director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney. Where the board, pursuant to this section, fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board. Any person who violates any provision of this section shall be guilty of a misdemeanor. [1965 ex.s. c 63 § 1; 1961 c 23 § 51.52.120. Prior: 1951 c 225 § 16; prior: 1947 c 246 § 3; Rem. Supp. 1947 § 7679-3.]

51.52.130 Attorney and witness fees in court appeal.

If, on appeal to the court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a workman or beneficiary, or in cases where a party other than the workman or beneficiary is the appealing party and the workman's or beneficiary's right to relief is sustained by the court, a reasonable fee for the services of the workman's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If the decision and order of the board is reversed or modified and if the accident fund is affected by the litigation then the attorney's fee fixed by the court for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. [1961 c 23 § 51.52.130. Prior: 1957 c 70 § 63; 1951 c 225 § 17; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

51.52.132 Unlawful attorney's fees. Where the department, the board or the court, pursuant to RCW 51.52.120 or 51.52.130 fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee in excess of that fixed by the department, board or the court. Any person who violates any provision of this section shall be guilty of a misdemeanor. [1965 ex.s. c 63 § 2; 1961 c 23 § 51.52.132. Prior: 1951 c 225 § 18.]

51.52.140 Rules of practice—Duties of attorney general—Supreme court appeal. Except as otherwise provided in this chapter, the practice in civil cases shall apply to appeals prescribed in this chapter. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal advisor of the department and the board. [1961 c 23 § 51.52.140. Prior: 1957 c 70 § 64; 1951 c 225 § 19; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

51.52.150 Costs on appeals. All expenses and costs incurred by the department for board and court appeals, including fees for medical and other witnesses, court reporter costs and attorney's fees, and all costs taxed against the department, shall be paid one-half out of the medical aid fund and one-half out of the accident fund. [1961 c 23 § 51.52.150. Prior: 1951 c 225 § 20; prior: 1931 c 116 § 1; RRS § 7697-1.]

Chapter 51.98 CONSTRUCTION

Sections

| | |
|-----------|--|
| 51.98.010 | Continuation of existing law. |
| 51.98.020 | Title, chapter, section headings not part of law. |
| 51.98.030 | Invalidity of part of title not to affect remainder. |
| 51.98.040 | Repeals and saving. |
| 51.98.050 | Emergency—1961 c 23. |
| 51.98.060 | Effective dates—1971 ex.s. c 289. |
| 51.98.070 | Severability—1971 ex.s. c 289. |
| 51.98.080 | Severability—1972 ex.s. c 43. |

Construction—1947 c 246: "The increased benefits and compensation authorized by this act shall not be applicable to a case of death, or injury or aggravation thereof, occurring prior to the effective date of this act." [1947 c 246 § 2.]

Construction—1923 c 136: "For all cases of injuries to workmen which occurred and for all claims or actions pending or causes of action existing before this act shall go into effect, Sections 7673 to 7796 of Remington's Compiled Statutes of Washington shall continue in force as they were prior to and they shall be unaffected by the passage of this amendatory act." [1923 c 136 § 20.] The internal references refer to the entire industrial insurance act as it existed in 1923. See also notes following RCW 49.16.090.

Construction—1919 c 131: "For all cases of injuries to workmen which occurred before this act shall be into effect Sections 6604-3, 6604-5, 6604-6, and 6604-10 shall continue in force as they were prior to and they shall be unaffected by the passage of this amendatory act. The amendatory provisions of sections 2, 4, 5, and 6 of this act shall apply only to injuries occurring after they shall go into effect." [1919 c 131 § 9.] The internal references to prior compilations refer to such sections as amended in the 1919 act by sections 2, 4, 5, and 6 as repeated in the last sentence of the above quotation. Such sections are scattered throughout chapters 51.16, 51.20, 51.32 and 51.48 RCW.

51.98.010 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 23 § 51.98.010.]

51.98.020 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 23 § 51.98.020.]

51.98.030 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: *Provided*, That nothing in this section shall affect or invalidate any of the provisions of RCW 51.04.090. [1961 c 23 § 51.98.030.]

51.98.040 Repeals and saving. The following acts or parts of acts are repealed:

- (1) Sections 1 through 29, 31 and 32, chapter 74, Laws of 1911;
- (2) Chapter 148, Laws of 1913;
- (3) Chapter 188, Laws of 1915;
- (4) Sections 1 through 20, and 22, chapter 28, Laws of 1917;
- (5) Chapter 120, Laws of 1917;
- (6) Chapter 67, Laws of 1919;
- (7) Chapter 129, Laws of 1919;

- (8) Sections 1 through 8 and 10, chapter 131, Laws of 1919;
- (9) Sections 1 through 12, and 14 through 17, chapter 182, Laws of 1921;
- (10) Chapter 128, Laws of 1923;
- (11) Sections 1 through 11, and 15 through 19, chapter 136, Laws of 1923;
- (12) Chapter 84, Laws of 1925 extraordinary session;
- (13) Chapter 111, Laws of 1925 extraordinary session;
- (14) Chapter 310, Laws of 1927;
- (15) Chapter 132, Laws of 1929;
- (16) Chapter 79, Laws of 1931;
- (17) Chapter 90, Laws of 1931;
- (18) Chapter 104, Laws of 1931;
- (19) Chapter 116, Laws of 1931;
- (20) Chapter 193, Laws of 1933;
- (21) Chapter 90, Laws of 1935;
- (22) Chapter 89, Laws of 1937;
- (23) Chapter 147, Laws of 1937;
- (24) Chapter 211, Laws of 1937;
- (25) Chapter 212, Laws of 1937;
- (26) Chapter 41, Laws of 1939;
- (27) Chapter 50, Laws of 1939;
- (28) Chapter 135, Laws of 1939;
- (29) Chapter 138, Laws of 1939;
- (30) Chapter 184, Laws of 1939;
- (31) Chapter 169, Laws of 1941;
- (32) Chapter 209, Laws of 1941;
- (33) Chapter 235, Laws of 1941;
- (34) Chapter 16, Laws of 1943;
- (35) Section 2, chapter 186, Laws of 1943;
- (36) Chapter 210, Laws of 1943;
- (37) Chapter 280, Laws of 1943;
- (38) Chapter 89, Laws of 1945;
- (39) Chapter 219, Laws of 1945;
- (40) Chapter 56, Laws of 1947;
- (41) Chapter 183, Laws of 1947;
- (42) Chapter 233, Laws of 1947;
- (43) Sections 1 and 3, chapter 246, Laws of 1947;
- (44) Chapter 247, Laws of 1947;
- (45) Chapter 281, Laws of 1947;
- (46) Chapter 219, Laws of 1949;
- (47) Chapter 115, Laws of 1951;
- (48) Chapter 198, Laws of 1951;
- (49) Chapter 214, Laws of 1951;
- (50) Chapter 225, Laws of 1951;
- (51) Chapter 236, Laws of 1951;
- (52) Chapter 246, Laws of 1951;
- (53) Chapter 143, Laws of 1953;
- (54) Chapter 218, Laws of 1953;
- (55) Chapter 74, Laws of 1955;
- (56) Chapter 360, Laws of 1955;
- (57) Sections 3 through 64, chapter 70, Laws of 1957;
- (58) Chapter 196, Laws of 1957;
- (59) Chapter 55, Laws of 1959;
- (60) Chapter 179, Laws of 1959;
- (61) Chapter 244, Laws of 1959;
- (62) Chapter 256, Laws of 1959; and
- (63) Chapter 308, Laws of 1959.

Such repeals shall not be construed as invalidating, abating, or otherwise affecting any existing right acquired or any liability or obligation incurred under the

provisions of the statutes repealed, nor any process, proceeding or judgment thereunder, nor any criminal or civil proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder, nor the term of office or appointment or employment of any person appointed or employed thereunder, nor shall such repeals affect the application of any provision repealed herein which provides for the retroactive or nonretroactive application of any provision of this title or laws prior hereto, nor shall such repeals affect any law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extrahazardous work or for a penalty or punishment to install or maintain any such protective device, means or method. The saving provision of this section shall apply to any and all claims or actions or proceedings of whatsoever nature whether heretofore completed or which may be pending at the time this act takes effect and all prior or existing laws having application thereto shall continue in force as they were prior to and shall be unaffected by this act. [1961 c 23 § 51.98.040.]

51.98.050 Emergency—1961 c 23. 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 23 § 51.98.050.]

51.98.060 Effective dates—1971 ex.s. c 289. The provisions of this 1971 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1971: *Provided*, That RCW 51.08.070 as amended by section 1 of this 1971 amendatory act, RCW 51.12.010 as amended in section 2 of this 1971 amendatory act, RCW 51.12.020 as amended in section 3 of this 1971 amendatory act and RCW 51.16.110 as amended in section 4 of this 1971 amendatory act shall take effect and become operative without any further action of the legislature on January 1, 1972. [1971 ex.s. c 289 § 90.]

51.98.070 Severability—1971 ex.s. c 289. If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected: *Provided*, That nothing in this section shall affect or invalidate any of the provisions of RCW 51.04.090. [1971 ex.s. c 289 § 91.]

51.98.080 Severability—1972 ex.s. c 43. If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1972 ex.s. c 43 § 38.]

TITLE 52

FIRE PROTECTION DISTRICTS

Chapters

- 52.04 Formation and dissolution.
- 52.08 Powers.
- 52.12 Commissioners.
- 52.16 Finances.
- 52.18 Service charges.
- 52.20 Local improvement districts.
- 52.22 Withdrawal.
- 52.24 Mergers.
- 52.28 Burning permits.
- 52.32 Validation.
- 52.34 Validation procedure.
- 52.36 Miscellaneous provisions.

Annexation of district territory to cities and towns: Chapter 35.13A RCW.

Conveyance of real property by public bodies—Recording: RCW 65.08.095.

Fire department vehicles; lighting, plates: RCW 46.37.184–46.37.188.

Fire fighting equipment, standardization: Chapter 70.75 RCW.

Firemen's relief and pensions: Chapters 41.16, 41.18 and 41.24 RCW.

Forest protection: Chapter 76.04 RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

Metropolitan municipal corporations: Chapter 35.58 RCW.

Municipal corporation may authorize investment of funds which are in custody of county treasurer or other municipal corporation treasurer: RCW 36.29.020.

State fire marshal: Chapter 48.48 RCW.

Trade centers—Annual service fee—Distribution to fire districts: RCW 53.29.030.

Volunteer firemen's relief and pensions: Chapter 41.24 RCW.

Chapter 52.04 FORMATION AND DISSOLUTION

Sections

- 52.04.020 Districts authorized.
- 52.04.030 Petition.
- 52.04.040 Hearing.
- 52.04.050 Notice—Publication and posting.
- 52.04.060 Hearing—Inclusion and exclusion of land.
- 52.04.070 Action on petition—Resolution—Candidates for first commissioners.
- 52.04.080 Election.
- 52.04.090 Ballots.
- 52.04.100 Notice of canvass of returns.
- 52.04.110 Declaration of result of election.
- 52.04.120 Resolution to be recorded.
- 52.04.130 When proposition fails to carry.
- 52.04.140 Appeal.
- 52.04.150 Organization conclusive.
- 52.04.155 Dissolution—Election method.

52.04.160 Disincorporation of district located in class A or AA county and inactive for five years.

52.04.020 Districts authorized. Fire protection districts for the elimination of fire hazards and for the protection of life and property in territories outside of cities and towns are hereby authorized to be established as in this act provided. [1959 c 237 § 1; 1947 c 254 § 1; 1945 c 162 § 1; 1943 c 121 § 1; 1941 c 70 § 1; 1939 c 34 § 1; Rem. Supp. 5654–101.]

Reviser's note: The language "this act" originally appeared in 1939 c 34 codified herein as RCW 52.04.020 through 52.04.155, 52.08.010 through 52.08.050, 52.08.070, 52.12.010 through 52.12.100, 52.16.010 through 52.16.050, 52.16.070, 52.20.010 through 52.20.070, 52.36.010, 52.36.030 and 52.36.040.

Construction, severability—1939 c 34: "The provisions of this act and proceedings thereunder shall be liberally construed with a view to effect their objects. 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 to be invalid or unconstitutional." [1939 c 34 § 51.]

Validating, saving—1939 c 34: "Any petition heretofore drawn, signed and filed with the county auditor in compliance with the provisions of section 1 to section 6, inclusive, of the Laws of 1933, Extraordinary Session, shall be valid and the various steps required by this act for the creation of a fire-protection district may be continued, if the further steps to be taken are begun within ninety (90) days after the taking effect of this act [March 1, 1939], and it shall not be necessary to prepare, sign and file with the county auditor a new petition, and any district so created shall not be invalid by reason of the failure to draw, sign and file a new petition under the provisions of this act." [1939 c 34 § 49.]

52.04.030 Petition. For the purpose of the formation of a fire protection district, a petition designating the boundaries of the proposed district, by metes and bounds, or by describing the lands to be included in the proposed district by United States townships, ranges and legal subdivisions, signed by not less than fifteen percent of the qualified registered electors who are resident within the boundaries of such district, and setting forth the object for the creation of such district and alleging that the establishment of such district shall be conducive to the public safety, welfare, and convenience, and will be a benefit to the property included therein, shall be filed with the county auditor of the county within which such proposed district is located, accompanied by an obligation signed by two or more petitioners, agreeing to pay the cost of the publication of the notice hereinafter provided for. The organization of any fire protection district heretofore otherwise legally formed and which includes lands within its boundaries required by law to pay forest protection assessment is hereby approved and confirmed as a legally

organized fire protection district in the state of Washington. The county auditor shall, within thirty days, from the date of filing such petition, examine the signatures and certify to the sufficiency or insufficiency thereof; and for such purpose shall have access to all registration books or records in the possession of the registration officers of the election precincts included, in whole or in part, within the boundaries of the proposed district. Such books and records shall be prima facie evidence of the truth of said certificate. No person having signed such a petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. If such petition shall be found to contain a sufficient number of signatures of qualified registered electors who are resident within the boundaries of such district, the county auditor shall transmit the same, together with his certificate of sufficiency attached thereto, to the board of county commissioners which shall thereupon by resolution entered upon its minutes, receive the same and fix a day and hour thereof when it will publicly hear said petition. [1963 ex.s. c 13 § 1; 1947 c 254 § 2; 1939 c 34 § 2; Rem. Supp. 1947 § 5654-102. Prior: 1933 c 60 § 2.]

52.04.040 Hearing. The hearing on said petition shall be at the regular office of the board of county commissioners and the same shall be held not less than twenty nor more than forty days from the date of receipt of said petition with certificate of sufficiency thereof from the county auditor. The hearing may be completed on the day and hour set therefor or the same may be adjourned from time to time as may be necessary for a determination of said petition, but such adjournment or adjournments shall not extend the time for determining said petition more than sixty days in all from the date of receipt of same by said board of county commissioners. [1939 c 34 § 3; RRS § 5654-103. Prior: 1933 c 60 § 2.]

52.04.050 Notice—Publication and posting. A copy of said petition with the names of the petitioners omitted, together with a notice signed by the clerk of said board of county commissioners stating the day, hour and place when and where the hearing on said petition shall take place, shall be published for three consecutive weekly issues of the official paper of the county prior to the day set for said hearing. Said clerk shall also cause a copy of said petition with the names of the petitioners omitted, together with a copy of said notice attached, to be posted for not less than fifteen days prior to the day of said hearing in each of three public places within the boundaries of the proposed district, to be previously designated by him and made a matter of record in the proceedings on said petition. [1939 c 34 § 4; RRS § 5654-104. Prior: 1933 c 60 § 2.]

52.04.060 Hearing—Inclusion and exclusion of land. At the time and place fixed for the hearing on said petition or at any adjournment thereof as herein provided, the board of county commissioners shall hear said petition and shall receive such evidence as it shall deem material in favor of or opposed to the formation

of such district or to the inclusion therein or exclusion therefrom of any lands, but no lands not within the boundaries of the proposed district as described in said petition, shall be included within the district without a written grant describing the land, executed by all persons having any interest of record therein, and filed in the proceedings on such petition. No land within the boundaries described in the petition, except that land which the commissioners find will receive no benefits from the proposed district, shall be excluded from the district. [1947 c 254 § 3; 1939 c 34 § 5; Rem. Supp. 1947 § 5654-105. Prior: 1933 c 60 § 3.]

52.04.070 Action on petition—Resolution—Candidates for first commissioners. The board of county commissioners shall have full authority to hear said petition and to determine the same and if it finds that the lands or any portion of the same described in said petition, and any lands added thereto by grant of those interested therein, will be benefited thereby and that the formation of the district will be conducive to the public safety, welfare and convenience, it shall by resolution so find; otherwise it shall deny said petition. If the board of county commissioners finds in favor of said petition, it shall designate the name and number of the district, fix the boundaries thereof and cause an election to be held therein for the purpose of determining whether or not the district shall be organized under the provisions of this act and for the purpose of the election of its first fire commissioners. Said board shall, prior to the calling of said election, name three resident electors of said district as candidates for election as the first fire commissioners of said district. [1939 c 34 § 6; RRS § 5654-106. Prior: 1933 c 60 § 3.]

Reviser's note: "this act", see note following RCW 52.04.020.

52.04.080 Election. Except as herein otherwise provided, said election shall be, so far as possible, called, noticed, held, conducted and canvassed in the same manner and by the same officials as may now or hereafter be provided by law for a special election in the county to authorize the issuance of bonds for a county purpose, and all such respective officials shall have full authority to do any and all things necessary for the purpose of said election. For the purpose of said election, county voting precincts may be combined or divided and redefined and the territory in the district shall be included in one or more election precincts as may be deemed convenient and the same shall be defined and a polling place for each designated. The notice of said election shall state generally and briefly the purpose thereof, shall give the boundaries of the proposed district, define the election precinct or precincts, designate the polling place for each, mention the names of the candidates for the first fire commissioners of the district, and shall name the day of the election and the hours during which the polls will be open. [1939 c 34 § 7; RRS § 5654-107.]

Elections: Title 29 RCW.

52.04.090 Ballots. The ballot for said election shall be in such form as may be convenient but shall present the propositions substantially as follows:

----- (insert county name) ----- County Fire Protection District No. ----- (insert number) -----
----- Yes -----
----- (insert county name) ----- County Fire Protection District No. ----- (insert number) -----
----- No -----

and shall specify the names of the candidates nominated for election as the first fire commissioners with appropriate space to vote for the same. [1939 c 34 § 8; RRS § 5654-108. Prior: 1933 ex.s. c 60 § 3.]

52.04.100 Notice of canvass of returns. At, or immediately prior, to, the opening of the polls for said election, a notice shall be posted by one of the election officials, in a conspicuous place at the polls, stating the day, hour, and place, when and where the returns of said election will be canvassed. Such returns shall be canvassed at the court house of said county on the Monday next following the day of said election, but said canvass may be adjourned from time to time when necessary to await the receipt of election returns, unavoidably delayed. The canvassing officials, upon conclusion of the canvass, shall forthwith certify and transmit the results thereof in writing to the board of county commissioners who shall thereupon examine the same. [1939 c 34 § 9; RRS § 5654-109.]

52.04.110 Declaration of result of election. If it is found upon examination of certificate of the canvassing officials that three-fifths of all the votes cast at said election were cast for the proposition "----- County Fire Protection District No. ----- Yes," the board of county commissioners shall by resolution entered in the minutes of its proceedings, declare such territory duly organized as a fire protection district under the name theretofore designated and shall declare the three candidates receiving the highest number of votes for fire commissioners the duly elected first fire commissioners of said district. [1941 c 70 § 2; 1939 c 34 § 10; Rem. Supp. 1941 § 5654-110.]

52.04.120 Resolution to be recorded. The clerk of said board shall duly certify a copy of said resolution and cause the same to be filed for record in the offices of the county auditor and of the county assessor of said county. Said certified copy shall be entitled to record in these offices without recording fee. [1939 c 34 § 11; RRS § 5654-111.]

52.04.130 When proposition fails to carry. If the certificate of the canvassing officials shows that the proposition to organize the proposed fire protection district failed to receive three-fifths of all the votes cast at said election, the board of county commissioners shall enter a minute to that effect and all proceedings had to create the proposed district shall become nullified and void. [1947 c 254 § 4; 1939 c 34 § 12; Rem. Supp. 1947 § 5654-112.]

52.04.140 Appeal. Any person, firm or corporation, having a substantial interest involved, and feeling aggrieved by any finding, determination or resolution of the board of county commissioners made in the proceedings for the organization of a fire protection district under the provisions of this act, may appeal from the same within five days after the same was made by said board, to the superior court of said county, in the same manner as that heretofore generally provided by law for appeals from the orders and determinations of said board. [1939 c 34 § 13; RRS § 5654-113.]

Reviser's note: "this act", see note following RCW 52.04.020. *Appeal from board's action: RCW 36.32.330.*

52.04.150 Organization conclusive. After the expiration of five days from the day of the resolution of the board of county commissioners declaring the district organized and upon the filing of said certified copies of the resolution of the board of county commissioners in the offices of the county auditor and of the county assessor, as aforesaid, the creation of the district shall be complete and its legal existence cannot thereafter be questioned by any person by reason of any defect in the proceedings had for the organization thereof. [1939 c 34 § 14; RRS § 5654-114.]

52.04.155 Dissolution—Election method. Fire protection districts may be dissolved upon a majority vote of the electors at an election for that purpose called, noticed, conducted and canvassed in the manner provided in the act for special elections and no further district obligations thereafter shall be incurred, but said election shall not abridge or cancel any of the outstanding obligations of said district or of any local improvement district therein, and the county board shall have authority to make annual levies against said lands until their respective obligations under the districts are fully paid. When the obligations are fully paid, all moneys in any of the funds of the district and all collections of unpaid district taxes shall be transferred to the expense fund of the county. [1939 c 34 § 46; RRS § 5654-146.]

52.04.160 Disincorporation of district located in class A or AA county and inactive for five years. See chapter 57.90 RCW.

**Chapter 52.08
POWERS**

Sections
52.08.010 Status.
52.08.020 General powers.
52.08.030 Specific powers—Equipment—Property—Service agreements—Joint operations—Association—General authority—Life insurance.
52.08.031 Contracts with third class cities, towns, for public facilities and services—Joint purchasing.
52.08.040 Eminent domain.
52.08.050 Condemnation proceedings.
52.08.060 Annexation of territory by election method—Procedure—Indebtedness—Hearing and election dispensed with, when.
52.08.065 Annexation by petition method—Alternative to election method.

- 52.08.066 Annexation by petition method—Petition—Signers—Content.
- 52.08.067 Annexation by petition method—Hearing—Notice.
- 52.08.068 Annexation by petition method—Resolution providing for annexation.
- 52.08.070 Power to create L.I.D.'s—Special taxes—Indebtedness.
- 52.08.080 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when.
- 52.08.090 Liability insurance for officials and employees.

52.08.010 Status. Fire protection districts created under this act shall be political subdivisions of the state and shall be held and construed to be municipal corporations within the provisions of the laws and Constitution of the state of Washington. Such a district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by law. [1967 c 164 § 5; 1939 c 34 § 15; RRS § 5654–115.]

Reviser's note: "this act", see note following RCW 52.04.020.

Purpose—1967 c 164: See note following RCW 4.96.010.

Severability—1967 c 164: See note following RCW 4.96.010.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

52.08.020 General powers. Such fire protection districts shall have full authority to carry out the objects of their creation and to that end are authorized to acquire, purchase, hold, lease, manage, occupy and sell real and personal property, or any interest therein, to enter into and to perform any and all necessary contracts, to appoint and employ the necessary officers, agents and employees, to sue and be sued, to exercise the right of eminent domain, to levy and enforce the collection of taxes and special taxes in the manner and subject to the limitations herein provided against the lands within the district, for district revenues, and to do any and all lawful acts required and expedient to carry out the purpose of this act. [1939 c 34 § 16; RRS § 5654–116.]

Reviser's note: "this act", see note following RCW 52.04.020.

52.08.030 Specific powers—Equipment—Property—Service agreements—Joint operations—Association—General authority—Life insurance. Any fire protection district organized under this act shall have authority:

(1) To lease, own, maintain, operate and provide fire engines and all other necessary or proper apparatus, facilities, machinery and equipment for the prevention and extinguishment of fires, and protection of life and property;

(2) To lease, own, maintain and operate real property, improvements and fixtures thereon suitable and convenient for housing, repairing and caring for fire fighting equipment;

(3) To enter into contract with any incorporated city or town whereby such city or town shall furnish fire prevention and fire extinguishment service to the districts and the inhabitants thereof under the provisions of this act upon such terms as the board of directors of

the district shall determine. To contract with another county fire protection district, or with any town, city or municipal corporation or governmental agency or private person or persons to consolidate or cooperate for mutual fire fighting protection and prevention purposes. Any city, town, municipal corporation or governmental agency may contract with a county fire protection district established and maintained under the provisions of this act for the purpose of affording such district fire fighting and protection equipment and service or fire prevention facilities, and in so contracting the district, city, town, municipal corporation or other governmental agency shall be deemed for all purposes to act within its governmental capacity. Any county fire protection district established and maintained under the provisions of this act, or any city, town, municipal corporation or other governmental agency is hereby authorized to contract with any person, firm or corporation for the purpose of affording fire fighting, protection or fire prevention facilities to such person, firm or corporation and such contractual relation shall be deemed for all purposes to be within the governmental power of such rural fire protection district, city, town, municipal corporation or other governmental agency;

(4) Fire protection districts situated in different counties may contract to operate jointly in carrying out the objects of their creation. Contracts for joint operation may provide for joint ownership of property and equipment, and may authorize a joint board of fire commissioners of the contracting districts to manage the affairs of the joint operations; to employ and discharge the necessary agents and employees and fix their respective wages and salaries; to provide and designate a suitable place in any county in which any of the contracting districts is situated, as a regular meeting place for the joint board; to incur the necessary expenses and direct the payment therefor from the funds of the contracting districts in such proportion as the joint boards shall determine; and to do all things as may in the judgment of the joint board be required to carry out the joint operations of the contracting districts.

The joint board shall consist of the members of the boards of the contracting districts and a majority of the membership of each district board shall constitute a quorum for the transaction of the business of the joint board. The members of the boards of fire commissioners of the contracting districts shall organize as a joint board annually in January after the second Monday thereof, elect a chairman and appoint a secretary for the ensuing year. Any member of the board of any contracting district may act as secretary of the joint board or the joint board may appoint such other person as the joint board may determine. The joint board shall prepare the annual budget for the joint operation of the contracting districts and shall determine the share of revenues for the joint operation to be raised by each district and the share of the expense of joint operation to be paid by each district in the ensuing year, and the secretary of the joint board shall certify and deliver within the time required by law, to the county auditor of each county involved, the part of the budget to be raised by the district in that county and the tax officials

of that county shall levy and collect the tax, and the county treasurer shall pay vouchers drawn by the joint board on the funds of the district in that county upon warrants issued by the county auditor of that county.

Contracts for joint operation of fire districts, as herein authorized shall run from year to year and as of January 1st may be terminated by written notice of the board of fire commissioners of any contracting district to the other contracting district or districts on or before July 1st and the contract for joint operations shall terminate on January 1st following: *Provided*, That all obligations of the joint operations must be paid or definitely arranged for before contract termination and no notice of termination shall relieve any contracting district of its unpaid obligation incurred under the contract for joint operation;

(5) To encourage uniformity and coordination of fire protection district operation programs, the fire commissioners of two or more fire protection districts, may form an association thereof, for the purpose of securing data and information of value in fighting and in preventing fires; hold and attend meetings thereof; and promote more economical and efficient operation of the associated fire protection districts. The directors of fire protection districts so associated shall adopt articles of association, select a chairman and secretary, and such other officers as they may determine, and may employ and discharge such agents and employees as the officers deem convenient to carry out the purposes of the association. The expenses of the association may be paid from fire protection district expense funds upon vouchers of the respective associated districts: *Provided*, That the aggregate contributions made to the association by any district in any calendar year shall not exceed two and one-half cents per thousand dollars of assessed valuation;

(6) Two or more fire protection districts may contract with each other and such a district may contract with a city or county or the state supervisor of forestry or any association approved by him for the joint leasing, ownership, maintenance and operation of all necessary and proper apparatus, facilities, machinery, and equipment for the elimination of fire hazards and for the protection of life and property within the contracting districts, and of real property, improvements and fixtures thereon suitable and convenient for the housing, repairing, and caring for such apparatus, facilities, machinery, and equipment, and may contribute their agreed proportion of the cost and expense thereof.

Such contracts shall be executed by the commissioners of the contracting districts and, when the contract is between such districts, the terms and conditions thereof shall be carried out by the boards of commissioners acting jointly;

(7) To do all things and perform all acts not otherwise prohibited by law.

(8) May enter into contract to provide group life insurance for the benefit of the personnel of the fire districts, but not to exceed ten thousand dollars coverage per covered employee, and not more than fifty percent of the cost of such insurance shall be borne by the employer fire district. [1973 1st ex.s. c 195 § 48; 1963 c 101

§ 1; 1959 c 237 § 2; 1947 c 254 § 6; 1941 c 70 § 4; 1939 c 34 § 20; Rem. Supp. 1947 § 5654-120.]

Reviser's note: "this act", see note following RCW 52.04.020.

~~Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195~~: See notes following RCW 84.52.043.

Metropolitan municipal corporations: Chapter 35.58 RCW.

Use of city fire apparatus beyond city limits: RCW 35.84.040.

52.08.031 Contracts with third class cities, towns, for public facilities and services—Joint purchasing. See RCW 35.24.274 and 35.24.275.

52.08.040 Eminent domain. The taking and damaging of property or rights therein or thereto by any such fire protection district to carry out any of the purposes of its organization are hereby declared to be for a public use and any such district organized under this act shall have and may exercise the power of eminent domain to acquire any property or rights therein or thereto either inside or outside the district, for the use of such district. Any such district exercising the power of eminent domain shall proceed in the name of the district in the manner provided by law for the appropriation of real property or of rights therein or thereto, by private corporations. [1939 c 34 § 18; RRS § 5654-118.]

Reviser's note: "this act", see note following RCW 52.04.020.

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); chapter 8.20 RCW.

52.08.050 Condemnation proceedings. Such fire protection district may, at its option, unite in a single action proceedings to condemn for its use, property which is held by separate owners. Two or more condemnation suits instituted separately may also, in the discretion of the court, be consolidated, upon motion of any interested party, into a single action. In such cases, the jury shall render separate verdicts for each tract of land in different ownership. No finding of the jury nor decree of the court as to damages in any condemnation proceeding instituted by the district shall in any manner be held or construed to abridge or destroy the right of the district to levy and collect taxes for any and all district purposes against the uncondemned land situated within the district. The title acquired by a fire protection district in condemnation proceedings shall be the fee simple title or such lesser estate as shall be designated in the decree of appropriation. [1939 c 34 § 19; RRS § 5654-119.]

52.08.060 Annexation of territory by election method—Procedure—Indebtedness—Hearing and election dispensed with, when. Any territory contiguous to a fire protection district and not within the boundaries of a city or town or other fire protection district may be annexed to such fire protection district, for the purpose of obtaining fire fighting protection or prevention facilities, by petition of fifteen percent of the qualified registered electors residing within the territory proposed to be annexed. Such petition shall be filed with the fire commissioners of the fire protection district and if the said fire commissioners shall concur in the said petition they shall then file such petition with the

county auditor who shall within thirty days from the date of filing such petition examine the signatures thereof and certify to the sufficiency or insufficiency thereof. After the county auditor shall have certified to the sufficiency of the petition, the proceedings thereafter by the board of county commissioners and the rights and powers and duties of the board of county commissioners, petitioners and objectors and the election and canvass thereof shall be the same as in the original proceedings to form a fire protection district: *Provided*, That the board of county commissioners shall have authority and it shall be its duty to determine on an equitable basis, the amount of obligation which the territory to be annexed to the district shall assume, if any, to place the taxpayers of the existing district on a fair and equitable relationship with the taxpayers of the territory to be annexed by reason of the benefits of coming into a going district previously supported by the taxpayers of the existing district, and such obligation may be paid to the district in yearly installments to be fixed by the county board if within the one dollar per thousand dollars of assessed value annual tax limit and included in the annual tax levies against the property in such annexed territory until fully paid. The amount of the obligation and the plan of payment thereof fixed by the county board shall be set out in general terms in the notice of election for annexation: *Provided, however*, That the special election shall be held only within the boundaries of the territory proposed to be annexed to said fire protection district. Upon the entry of the order of the board of county commissioners incorporating such contiguous territory with such existing fire protection districts, said territory shall become subject to the indebtedness, bonded or otherwise, of said existing district in like manner as the territory of said district. Should such petition be signed by sixty percent of the qualified registered electors residing within the territory proposed to be annexed, and should the fire commissioners concur therein, an election in such territory and a hearing on such petition shall be dispensed with and the board of county commissioners shall enter its order incorporating such territory within the said existing fire protection district. [1973 1st ex.s. c 195 § 49; 1965 ex.s. c 18 § 1; 1959 c 237 § 3; 1947 c 254 § 5; 1945 c 162 § 2; 1941 c 70 § 3; Rem. Supp. 1947 § 5654-116a.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

52.08.065 Annexation by petition method—Alternative to election method. The method of annexation provided for in RCW 52.08.066, 52.08.067 and 52.08.068 shall be an alternate method to that specified in RCW 52.08.060. [1965 c 59 § 1.]

Reviser's note: Session law phrase "sections one, two, and three of this act" is above translated as "RCW 52.08.066, 52.08.067 and 52.08.068" to correct manifest error in reference.

52.08.066 Annexation by petition method—Petition—Signers—Content. A petition for annexation of an area contiguous to a fire district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired.

It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. The petition shall state financial obligation, if any, to be assumed by the area to be annexed. [1965 c 59 § 2.]

52.08.067 Annexation by petition method—Hearing—Notice. If the petition for annexation filed with the board of commissioners complies with the requirements of law, as proved to the satisfaction of the board of commissioners, it may entertain the petition, fix the date for public hearing thereon, and cause notice of the hearing to be published in one issue of a newspaper of general circulation in the area proposed to be annexed and also posted in three public places within the area proposed for annexation. The notice shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. The expense of publication and posting of the notice shall be borne by the signers of the petition. [1965 c 59 § 3.]

52.08.068 Annexation by petition method—Resolution providing for annexation. Following the hearing the board of commissioners shall determine by resolution whether annexation shall be made. It may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the resolution a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [1965 c 59 § 4.]

52.08.070 Power to create L.I.D.'s—Special taxes—Indebtedness. Such fire protection districts shall have authority to create local improvement districts to include any or all of the lands within the fire protection district, to provide for the levy and collection of special taxes against the respective lands benefited and to issue evidences of indebtedness chargeable against said lands as in this act provided; and to issue and sell evidences of term indebtedness of the district and to make provisions for the payment thereof; but such districts shall have no authority to issue and sell any evidence of indebtedness of any kind or nature with a fixed maturity for a term longer than six years from the date of the issuance and sale thereof. [1941 c 70 § 60; 1939 c 34 § 17; Rem. Supp. 1941 § 5654-117.]

Reviser's note: "this act", see note following RCW 52.04.020.
Finances: Chapter 52.16 RCW.

52.08.080 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when. Any fire protection district may execute an executory conditional sales contract with any other municipal corporation, the state or any of its political subdivisions, the government of the United States, or any

private party for the purchase of any real or personal property, or property rights, in connection with the exercise of any powers or duties which they now or hereafter are authorized to exercise, if the entire amount of the purchase price specified in such contract does not result in a total indebtedness in excess of three-eighths of one percent of the value of the taxable property in such fire protection district: *Provided*, That if such a proposed contract would result in a total indebtedness in excess of three-eighths of one percent of the value of the taxable property of such fire protection district, as the case may be, a proposition in regard to whether or not such a contract may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters: *Provided further*, That any fire protection district may jointly execute contracts authorized by this section.

The term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015. [1970 ex.s. c 42 § 29; 1965 c 21 § 1.]

Severability and effective date—1970 ex.s. c 42: See note following RCW 39.36.015.

52.08.090 Liability insurance for officials and employees. The board of commissioners of each fire district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 3.]

Chapter 52.12 COMMISSIONERS

Sections

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| 52.12.010 | Number—Qualifications—Insurance—Compensation—Service as volunteer fireman—Waiver of compensation—Terms of first commissioners. |
| 52.12.015 | Number in district having full time, fully paid personnel—Terms of first appointees. |
| 52.12.020 | Terms—Elections. |
| 52.12.030 | Election precincts. |
| 52.12.040 | Declaration of candidacy. |
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| 52.12.060 | Terms of first elected commissioners. |
| 52.12.070 | Oath of office. |
| 52.12.080 | Chairman—Secretary—Duties and oath. |
| 52.12.090 | Office—Meetings. |
| 52.12.100 | Duties of board. |
| 52.12.110 | Contracts for work or purchases—Bids. |

Association of fire commissioners to furnish information to legislature and governor: RCW 44.04.170.

52.12.010 Number—Qualifications—Insurance—Compensation—Service as volunteer fireman—Waiver of compensation—Terms of first commissioners. The affairs of the district shall be managed by a board of fire commissioners composed of three resident electors of the district. The members of any district which owns or operates motor-powered fire fighting equipment shall each receive twenty-five dollars per day, not to exceed seventy-five dollars per

month, for attendance at board meetings and for performance of other services in behalf of the district. In addition, they shall receive necessary expenses incurred in attending meetings of the board or when otherwise engaged in district business, and shall be entitled to receive the same insurance available to all firemen of the district: *Provided*, That the premiums for such insurance, except liability insurance, shall be paid by the individual commissioners who elect to receive it. In any district which has a fire department owning and operating motor-powered fire fighting equipment and employing personnel on a full time, fully paid basis, fire commissioners, in addition to expenses as aforesaid, shall each receive twenty-five dollars per day, not to exceed one hundred twenty-five dollars per month, for attendance at board meetings and for performance of other services on behalf of the district. Any commissioner may waive all or any portion of his compensation payable under this section as to any month or months during his term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which said compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The board shall fix the compensation to be paid the secretary and all other agents and employees of the district. The board may, by resolution adopted by unanimous vote, authorize any of its members to serve as volunteer firemen without compensation. A commissioner actually serving as a volunteer fireman may enjoy the rights and benefits of a volunteer fireman. The first commissioners shall serve until after the next general election for the selection of commissioners and until their successors have been elected or appointed and have qualified. [1973 c 86 § 1; 1971 ex.s. c 242 § 2; 1969 ex.s. c 67 § 1; 1967 c 51 § 1; 1965 c 112 § 1; 1959 c 237 § 4; 1957 c 238 § 1; 1945 c 162 § 3; 1939 c 34 § 22; Rem. Supp. 1945 § 5654-122.]

Candidates for first commissioners: RCW 52.04.070.

Terms of first elected commissioners: RCW 52.12.060.

52.12.015 Number in district having full time, fully paid personnel—Terms of first appointees. In any fire protection district maintaining a fire department consisting wholly of personnel employed on a full time, fully paid basis, there shall be five fire commissioners. The two positions created on boards of fire commissioners by this section shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next general fire district election after May 20, 1971, at which two commissioners shall be elected for six year terms, and the other appointee to serve until the second general fire district election after May 20, 1971, at which two commissioners shall be elected for six year terms. [1971 ex.s. c 242 § 3.]

52.12.020 Terms—Elections. Except as herein otherwise provided, the term of fire commissioner shall be six years from and after the second Monday in January next succeeding his election. At the next general election, fire commissioners of the district shall be elected. Such elections shall be called, noticed, conducted, canvassed, and certificates of election issued by the same officials as for general elections for selection of county officials. [1939 c 34 § 23; RRS § 5654–123.]

Elections: Title 29 RCW.

52.12.030 Election precincts. The polling places for such district elections shall be those of the county voting precincts which include any of the territory within the fire prevention districts, and may be located outside the boundaries of the district and no such election shall be held to be irregular or void on that account. [1939 c 34 § 24; RRS § 5654–124.]

52.12.040 Declaration of candidacy. Not more than sixty nor less than forty-six days prior to the day of election any resident elector of the district, desiring to become a candidate for office of fire commissioner, shall file with the county auditor of his county a statement of his candidacy, for which no fee shall be charged. Such resident electors so filing shall be entitled to have their names appear as candidates on the ballot for said election. [1972 ex.s. c 101 § 1; 1947 c 254 § 7; 1939 c 34 § 25; Rem. Supp. 1947 § 5654–125.]

52.12.050 Vacancies—Grounds for declaring office vacant. In case of vacancy occurring in the office of fire commissioner, such vacancy shall, within thirty days, be filled by appointment of a resident elector of the district by the county legislative authority and the person appointed shall serve until his successor has been elected or appointed and has qualified. At the next general election, if there is sufficient time for the nomination of candidates for office of fire commissioner as herein provided, after the filling of any vacancy in such office as aforesaid, there shall be elected a fire commissioner to serve for the remainder of the unexpired term. If a fire commissioner is absent from the district for three consecutive regularly scheduled meetings unless by permission of the board his office shall be declared vacant by the board of county commissioners and such vacancy shall be filled as provided for in this section but provided that no such action shall be taken unless he is notified by mail after two consecutive unexcused absences that his position will be declared vacant if he is absent without being excused from the next regularly scheduled meeting. [1974 1st ex.s. c 17 § 1; 1971 ex.s. c 153 § 1; 1939 c 34 § 26; RRS § 5654–126.]

52.12.060 Terms of first elected commissioners. At the time of the next general election occurring thirty or more days after the creation of the district, three members of the board of fire commissioners shall be elected. The candidate receiving the highest number of votes shall serve for a term of six years beginning on the second Monday in January following, the candidate receiving the next highest number of votes shall serve for

a term of four years, as aforesaid, and the candidate receiving the next highest number of votes shall serve for a term of two years, as aforesaid. It is the intent of the law that the term of one fire commissioner only shall expire biennially and that this relationship be preserved so far as legally possible. [1939 c 34 § 27; RRS § 5654–127.]

Candidates for first commissioners: RCW 52.04.070.

Terms of first commissioners: RCW 52.12.010.

52.12.070 Oath of office. Each fire commissioner before beginning the duties of his office shall take and subscribe an official oath for the faithful discharge of the duties of his office, which oath shall be filed in the office of the clerk of the superior court in the county where the district is situated. [1939 c 34 § 29; RRS § 5654–129.]

52.12.080 Chairman—Secretary—Duties and oath. The fire commissioners shall organize as a board and shall elect a chairman from their number and shall appoint a secretary of the district, who may or may not be a member of the board, for such term as they shall by resolution determine, but if serving as member of the board shall not receive additional compensation for serving as secretary. The secretary of the district shall keep a record of the proceedings of the board and shall perform such other duties as shall be prescribed by the board or by law, and shall take and subscribe an official oath similar to that taken and subscribed by the fire commissioners which oath shall be filed in the same office as that of the commissioners. [1965 c 112 § 2; 1939 c 34 § 30; RRS § 5654–130.]

52.12.090 Office—Meetings. The office of the fire commissioners and principal place of business of the district shall be at some place within the county in which the district is situated, to be designated by the board of fire commissioners. The board shall hold regular monthly meetings at their office on such day as they, by resolution previously adopted, shall determine, and may adjourn such meetings as may be required for the proper transaction of business. Special meetings of the board may be called at any time by a majority of the commissioners or by the secretary and the chairman of the board. Any fire commissioner not joining in the call of a special meeting shall be entitled to a three days written notice by mail of the same, specifying generally the business proposed to be transacted at said special meeting, but when at any special meeting of the board all members are present, lack of previous notice thereof shall not invalidate the proceedings. [1947 c 254 § 8; 1939 c 34 § 31; Rem. Supp. 1947 § 5654–131.]

52.12.100 Duties of board. All meetings of the fire commissioners shall be public and a majority shall constitute a quorum for the transaction of business. All records of the board shall be open to the inspection of any elector of the district at any meeting of the board. The board shall have the power and it shall be its duty to adopt a seal of the district, to manage and conduct the business affairs of the district, to make and execute

all necessary contracts, to employ any necessary service and to establish and promulgate reasonable rules and regulations for the government of the district and for the performance of its functions and generally to perform all such acts as may be necessary fully to carry out the objects of the creation of the district. [1939 c 34 § 32; RRS § 5654-132.]

Meetings: Chapters 42.30, 42.32 RCW.

Purchases from state institutions: Chapter 72.60 RCW.

52.12.110 Contracts for work or purchases—Bids. Whenever the cost of any work to be done or the purchase of any materials, supplies, or equipment, will exceed the sum of twenty-five hundred dollars, the same shall be done by contract after a call for bids which shall be awarded to the lowest responsible bidder, in accordance with the terms of *RCW 39.24.010: *Provided*, That where the cost of work to be done or materials, supplies, or equipment to be purchased involves the construction or improvement of any fire station or other buildings the same shall be done by contract after call for bids whenever the estimated cost exceeds one thousand dollars. Notice of the call for bids shall be given by posting notice thereof in three public places in the district and by publication once each week for two consecutive weeks, said posting and first publication to be at least two weeks before the date fixed for opening of the bids, and such publication to be in a newspaper of general circulation within the district. The commissioners shall have the power by resolution to reject any and all bids and make further calls for bids in the same manner as the original call. If no bid is received on the first call, the commissioners may readvertise and make a second call, or may enter into a contract without any further call. [1972 ex.s. c 101 § 2; 1953 c 176 § 1.]

***Reviser's note:** RCW 39.24.010 was repealed by section 1, chapter 101, Laws of 1967 ex.s.

**Chapter 52.16
FINANCES**

- Sections
- 52.16.010 County treasurer as financial agent.
- 52.16.020 Funds.
- 52.16.030 Budget for each fund.
- 52.16.040 Tax levies—Assessment roll—Collection.
- 52.16.050 Disbursal of funds—Monthly reports.
- 52.16.061 Coupon warrants—Issuance, form, etc.
- 52.16.070 Obligations shall not exceed taxes, revenues from contracts, leases, services, cash balances, etc.
- 52.16.080 Bonds may be issued for capital purposes—Limitation.
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- 52.16.100 Bond form, interest, duration.
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- 52.16.120 Annual levy to meet bond payments.
- 52.16.130 General levy authorized—Limit—Excess levy at special election.
- 52.16.140 General levy may exceed limit—When.
- 52.16.150 Donations and bequests to district.
- 52.16.160 Tax levy by district when township disorganized and no longer making a levy.
- 52.16.170 Taxation and/or assessment of lands lying both within a fire protection district and forest protection assessment area.

52.16.010 County treasurer as financial agent. It shall be the duty of the county treasurer of the county in which any fire district created under this act is situated to receive and disburse all district revenues, to collect all taxes and assessments authorized and levied under this act, and to credit all district revenues to the proper fund. [1939 c 34 § 33; RRS § 5654-133.]

Reviser's note: "this act", see note following RCW 52.04.020.

52.16.020 Funds. In each county in which a fire protection district is situated, there are hereby created in the county treasurer's office, for the use of each said district, the following funds: (1) Expense fund; (2) coupon warrant fund; (3) reserve fund; (4) local improvement district No. _____ fund; and (5) general obligation bond fund. All taxes levied for administrative, operative, and maintenance purposes and for the purchase of firefighting equipment and apparatus and for the housing thereof, when collected, and proceeds from the sale of coupon warrants shall be placed by the county treasurer in the expense fund. All taxes levied for the payment of coupon warrants and interest thereon, when collected, shall be placed by the county treasurer in the coupon warrant fund. Proceeds from the sale of general obligation bonds shall be placed by the county treasurer in the expense fund. The board of fire commissioners may include in its annual budget items of possible outlay to be provided for and held in reserve for any district purpose, and taxes shall be levied therefor, and all such taxes, when collected, shall be placed by the county treasurer in the reserve fund; said reserve fund, or any part thereof, may be transferred by the county treasurer to any other funds of the district at any time upon order of the board of fire commissioners. All special taxes levied against the lands in any improvement district within the district, when collected, shall be placed by the county treasurer in the local improvement district fund for such local improvement district. [1959 c 221 § 1; 1955 c 134 § 1; 1953 c 176 § 2; 1951 2nd ex.s. c 24 § 1; 1949 c 22 § 1; 1947 c 254 § 9; 1939 c 34 § 34; Rem. Supp. 1949 § 5654-134.]

52.16.030 Budget for each fund. Annually after the county board of equalization has equalized the assessments for general tax purposes in that year, the secretary of the district shall prepare a budget of the requirements of each district fund, certify the same and deliver it to the board of county commissioners in ample time for it to make tax levies for the purposes of the district. [1939 c 34 § 35; RRS § 5654-135.]

52.16.040 Tax levies—Assessment roll—Collection. At the time of making general tax levies in each year the board of county commissioners shall make the required levies for district purposes against the real and personal property in the district in accordance with the equalized valuations thereof for general tax purposes and as a part of said general taxes. Such tax levies shall be a part of the general tax roll and shall be collected as a part of the general taxes against the property in the district. [1939 c 34 § 36; RRS § 5654-136.]

Levy of taxes: Chapter 84.52 RCW.

52.16.050 Disbursal of funds—Monthly reports.

The county treasurer shall pay out money received for the account of the district upon warrants issued by the county auditor against the proper funds of the district. Said warrants shall be issued on vouchers approved and signed by a majority of the district board and by the secretary thereof. The county treasurer shall also be authorized to pay coupon warrants and the accrued interest thereon in accordance with their terms out of the coupon warrant fund upon presentation of such warrants or interest coupons thereof. The county treasurer shall report in writing monthly to the secretary of the district the amount of money held by him in each fund and the amounts of receipts and disbursements for each fund during the preceding month. [1939 c 34 § 37; RRS § 5654–137.]

52.16.061 Coupon warrants—Issuance, form, etc.

The board of fire commissioners of the district shall have authority to contract indebtedness and to refund same for any general district purpose, including expenses of maintenance, operation and administration, and the acquisition of firefighting facilities, and evidence the same by the issuance and sale at par plus accrued interest of coupon warrants of the district in such denominations, in such form and payable at such time or times not longer than six years from the issuing date of said coupon warrants; said date to be specified thereon, as the board shall determine and provide. Such coupon warrants shall be payable to bearer, shall have interest coupons attached providing for the payment of interest at such rate or rates as authorized by the board, payable semiannually on the first day of January and of July following in each year: *Provided*, That at the option of district board the aggregate amount of coupon warrants may include a sum sufficient to pay the annual interest thereon for a period not exceeding one year from the issuing date of the coupon warrants and in that event such interest shall be taken from the proceeds of the sale of the coupon warrants and immediately placed in the coupon warrant fund of the district, for the payment of the interest coupons maturing during the first year of the coupon warrants. The issuance of the coupon warrants, prior to delivery thereof to the purchaser, shall be recorded in the office of the county treasurer in a book kept for that purpose. Said coupon warrants when issued shall constitute general obligations of the district. All outstanding district warrants of every kind shall outlaw and become void after six years, from the maturity date thereof where money shall be available in the proper fund of the district within that time for their payment. [1970 ex.s. c 56 § 66; 1969 ex.s. c 232 § 89; 1955 c 134 § 2; 1953 c 176 § 3.]

Purpose, validation—Saving, severability, effective date—1969 ex.s. c 232: See note following RCW 39.44.030.

52.16.070 Obligations shall not exceed taxes, revenues from contracts, leases, services, cash balances, etc. Except as authorized by virtue of the issuance and sale of district coupon warrants and general obligation

bonds, the board of fire commissioners shall have no authority to incur expenses or other financial obligations payable in any year in excess of the aggregate amount of taxes levied for that year, revenues derived from contracts, leases and fire protection services rendered to any other municipal corporation, person, firm or corporation, or state agency, grants, bequests, gifts or donations whether received from governmental or non governmental sources, and the cash balances on hand in the expense and reserve funds of the district on the first day of that year. In the event that there are any unpaid warrants drawn on any district fund or funds for expenses and obligations incurred outstanding at the end of any calendar year, the same may be paid from taxes collected in the subsequent year or years, revenues, grants, bequests, gifts or donations. [1972 ex.s. c 16 § 1; 1959 c 221 § 2; 1955 c 134 § 3; 1951 2nd ex.s. c 24 § 10; 1947 c 254 § 11; 1943 c 106 § 1; 1941 c 70 § 5; 1939 c 34 § 39; Rem. Supp. 1947 § 5654–139.]

52.16.080 Bonds may be issued for capital purposes—Limitation.

Fire protection districts are hereby authorized to incur general indebtedness for capital purposes which shall include replacements of equipment which may be damaged or lost and for the purpose of refunding outstanding coupon warrants issued for capital purposes only, not to exceed an amount, together with any outstanding general obligation indebtedness, equal to three-fourths of one percent of the value of the taxable property within such district, as the term "value of the taxable property" is defined in RCW 39.36.015, and to issue general obligation bonds evidencing such indebtedness on the terms and provisions hereinafter set forth, the principal and interest thereof to be payable from annual tax levies to be made in excess of the constitutional and/or statutory tax limitations. [1973 1st ex.s. c 195 § 50; 1970 ex.s. c 42 § 30; 1953 c 176 § 4; 1951 2nd ex.s. c 24 § 3.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability and effective date—1970 ex.s. c 42: See note following RCW 39.36.015.

52.16.090 Election as to proposed bond issue. After adoption by the board of fire commissioners of any district of a resolution fixing the purpose or purposes for the incurring of such indebtedness and the issuance of said bonds, the question of whether or not such indebtedness shall be incurred and such bonds issued shall be submitted to the qualified electors of the district for their ratification or rejection at a general or special election which may be held at any time. Such proposition shall state the purpose or purposes for which such bonds shall be issued, and the amount thereof, the length of time the same shall run, the maximum interest which the same may bear, and must receive an affirmative vote of three-fifths of those voting on such proposition at such election, at which such election the total number of persons voting shall constitute not less than forty percent of the voters in said fire protection district who voted at the last preceding general state election. [1951 2nd ex.s. c 24 § 4.]

52.16.100 Bond form, interest, duration. Bonds shall be serial in form and maturity and numbered from one up consecutively. They shall bear interest at a rate or rates as authorized by the board of fire commissioners, payable semiannually from date of said bonds until the principal thereof is paid with interest coupons evidencing such interest to be attached thereto. The first annual maturity shall be two years from the date of issue of said bonds and the various annual maturities shall be as nearly as practicable in such amounts as will, together with the interest on all outstanding bonds, be met by equal annual tax levies for the payment of the principal and interest of said bonds. Bonds issued under this act may not run for more than twenty years from the date of issue and except for bond No. 1, may only be in multiples of one hundred dollars. [1970 ex.s. c 56 § 67; 1969 ex.s. c 232 § 40; 1951 2nd ex.s. c 24 § 5.]

Reviser's note: The language "this act" refers to 1951 2nd ex.s. c 24 codified herein as RCW 52.16.020, 52.16.070 through 52.16.150.

Purpose, validation—Saving, severability, effective date—1969 ex.s. c 232: See note following RCW 39.44.030.

52.16.110 Execution and sale of bonds. Such bonds shall be signed by the chairman of the board of fire commissioners and attested by the secretary of said board under the seal of the district and the interest coupons to be attached thereto shall be signed with the facsimile signatures of said officials. Said bonds shall be sold in such manner as the board of fire commissioners shall deem to be for the best interest of the district and at a price not less than par. [1951 2nd ex.s. c 24 § 6.]

52.16.120 Annual levy to meet bond payments. An annual levy in excess of the constitutional and/or statutory tax limitations shall be made upon all the taxable property within such district, except those lands within the district which are now or will hereafter be required to pay forest protection assessment, by the officers or governing body thereof now or hereafter charged by law with the duty of levying taxes for such district sufficient to meet the annual and semiannual payments of principal and interest due on said bonds. [1973 1st ex.s. c 195 § 51; 1951 2nd ex.s. c 24 § 7.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

52.16.130 General levy authorized—Limit—Excess levy at special election. To carry out the purposes for which fire protection districts are created, the board of fire commissioners of any such district is hereby authorized to levy each year, in addition to the levy or levies provided in this act for the payment of the principal and interest of any outstanding general obligation bonds and the levies necessary to pay the principal and interest of any coupon warrants heretofore issued and outstanding, an ad valorem tax on all taxable property located in such district not to exceed fifty cents per thousand dollars of assessed value: *Provided*, That in no case may the total general levy for all purposes, except retirement of general obligation bonds, exceed one dollar per thousand dollars of assessed value. Levies in excess of one dollar per thousand dollars of assessed

value or in excess of aggregate dollar rate limitations or both may be made for any district purpose when so authorized at a special election under the provisions of RCW 84.52.052. Any such tax when so levied shall be certified to the proper county officials for the collection of the same as for other general taxes. Such taxes when collected shall be placed in the appropriate district fund or funds as provided by law, and shall be paid out on warrants of the auditor of the county in which the district is situated, upon authorization of the board of fire commissioners of such district. [1973 1st ex.s. c 195 § 52; 1971 ex.s. c 105 § 1; 1963 ex.s. c 13 § 2; 1951 2nd ex.s. c 24 § 8.]

Reviser's note: "this act", see note following RCW 52.16.100.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

52.16.140 General levy may exceed limit—When. Notwithstanding the limitation of dollar rates contained in RCW 52.16.130, the board of fire commissioners of any such district is hereby authorized to levy, in addition to any levy for the payment of the principal and interest of any outstanding general obligation bonds and levies necessary to pay the principal and interest of any coupon warrants heretofore issued and outstanding, an ad valorem tax on all property located in such district of not to exceed fifty cents per thousand dollars of assessed value when such levy will not take dollar rates which other taxing districts may lawfully claim and which will not cause the combined levies to exceed the constitutional and/or statutory limitations, and such additional levy, or any portion thereof, may also be made when dollar rates of other taxing units is released therefor by agreement with the other taxing units from their authorized levies. [1973 1st ex.s. c 195 § 53; 1951 2nd ex.s. c 24 § 9.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Levy of taxes: Chapter 84.52 RCW.

52.16.150 Donations and bequests to district. Any fire protection district may, by resolution of its board of fire commissioners, accept and receive in behalf of the district, any money or property donated, devised or bequeathed to the district, and may carry out the terms of the donation, devise or bequest, if within the powers granted by law to fire protection districts, or in the absence of such terms, may expend or use the same for such district purposes as shall be determined by the board. [1951 2nd ex.s. c 24 § 11.]

52.16.160 Tax levy by district when township disorganized and no longer making a levy. Notwithstanding the limitation of dollar rates contained in RCW 52.16.130, and in addition to any levy for the payment of the principal and interest of any outstanding general obligation bonds and levies necessary to pay the principal and interest of any coupon warrants heretofore issued and outstanding and in addition to any levy authorized by RCW 52.16.130, 52.16.140 or any other statute, if in any county where there are one or more townships in existence making annual tax levies and such township

or townships are disorganized as a result of a county-wide disorganization procedure prescribed by statute and is no longer making any tax levy, or any township or townships for any other reason no longer makes any tax levy, the board of fire commissioners of any fire protection district within such county is hereby authorized to levy each year an ad valorem tax on all taxable property within such district of not to exceed fifty cents per thousand dollars of assessed value, which levy may be made only if it will not cause the combined levies to exceed the constitutional and/or statutory limitations. [1973 1st ex.s. c 195 § 54; 1969 ex.s. c 243 § 2; 1961 c 53 § 9.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1969 ex.s. c 243: See note following RCW 45.82.010.

County-wide disorganization of townships: Chapter 45.80 RCW.

52.16.170 Taxation and/or assessment of lands lying both within a fire protection district and forest protection assessment area. In the event that any lands lie both within a fire protection district and a forest protection assessment area they shall be taxed and/or assessed as follows:

(1) If such lands are wholly unimproved, they shall be subject to forest protection assessments but shall not be subject to fire protection district levies;

(2) If such lands are wholly improved, they shall be subject to fire protection district levies but shall not be subject to forest protection assessments;

(3) If such lands are partly improved and partly unimproved they shall be subject both to fire protection district levies and to forest protection assessments: *Provided*, That upon request being made therefor, accompanied by appropriate legal descriptions, the county assessor shall segregate any unimproved portions which each consist of twenty or more acres, and thereafter such unimproved portion or portions shall be subject only to forest protection assessments. [1963 ex.s. c 13 § 3.]

Forest protection assessments: RCW 76.04.360.

Chapter 52.18 SERVICE CHARGES

| | |
|-----------|---|
| Sections | |
| 52.18.010 | Service charges authorized—Exceptions—Amounts—Limitations. |
| 52.18.020 | Personal property, improvements to real property—Defined. |
| 52.18.030 | Resolution establishing service charges—Contents—Listing—Collection. |
| 52.18.040 | Reimbursement of county for administration and collection expenses. |
| 52.18.050 | Voter approval of service charges required—Election—Ballot. |
| 52.18.060 | Public hearing—Required—Report—Service charge resolution to be filed. |
| 52.18.070 | Review board. |
| 52.18.080 | Model resolution. |
| 52.18.900 | Severability—1974 1st ex.s. c 126. |

52.18.010 Service charges authorized—Exceptions—Amounts—Limitations. The board of fire commissioners of any fire protection district created pursuant to chapter 52.04 RCW may by resolution, for fire protection purposes authorized by law, fix and impose a service charge upon personal property and improvements to real property, which are located within the fire protection district on the date specified and which have or will receive the benefit of fire protection provided by the fire protection district, to be paid by the owners of such properties: *Provided*, That such service charge shall not apply to personal property and improvements to real property owned or used by any recognized religious denomination for purposes related to the religious works of such denomination, including schools and educational facilities and all grounds and buildings related thereto or to personal property and improvements to real property owned or used by public or private schools or institutions of higher education. The aggregate amount of such service charges in any one year shall not exceed an amount equal to sixty percent of the operating budget for the year in which the service charge is to be collected: *Provided*, That it shall be the duty of the county legislative authority to make any necessary adjustments to assure compliance with such limitation and to immediately notify the board of fire commissioners of any changes thereof.

Any such service charge imposed shall be reasonably proportioned to the measurable financial benefits to property resulting from the fire protection afforded by the district. It shall be deemed acceptable to proportion the service charge to the values of the properties as found by the county assessor modified generally in the proportion that fire insurance rates are reduced or entitled to be reduced as the result of providing such fire services. Any other method that reasonably apportions the service charges to the actual financial benefits resulting from the degree of protection, such as the distance from regularly maintained fire protection equipment, may be specified in the resolution and shall be subject to contest only on the ground of unreasonable or capricious action: *Provided*, That any such method shall be in accordance with the fire defense rating of the district as ratified by the state insurance commissioner: *Provided further*, That no service charge authorized by the provisions of this chapter shall be applicable to the personal property or improvements to real property of any individual, corporation, partnership, firm, organization, or association maintaining his or its own fire department and whose fire protection and training system has been accepted by a fire insurance underwriter maintaining a fire protection engineering and inspection service authorized by the state insurance commissioner to do business in this state. [1974 1st ex.s. c 126 § 1.]

52.18.020 Personal property, improvements to real property—Defined. The term "personal property" for the purposes of this chapter shall be held and construed to embrace and include every form and manner of tangible personal property, including but not limited to, all

goods, chattels, stock in trade, estates, or crops: *Provided*, That there shall be exempt from the service charge imposed pursuant to the provisions of this chapter all personal property not assessed and subjected to ad valorem taxation by the county assessor pursuant to the provisions of Title 84 RCW, and all property subject to the provisions of RCW 52.36.020: *Provided*, That the term "personal property" shall not include field crops, livestock or other tangible personal farm property not ordinarily housed or stored within a building structure: *Provided further*, That the term "improvements to real property" shall not include permanent growing crops, field improvements installed for the purpose of aiding the growth of permanent crops, or other field improvements normally not subject to damage by fire. [1974 1st ex.s. c 126 § 2.]

52.18.030 Resolution establishing service charges—Contents—Listing—Collection. The resolution establishing service charges as specified in RCW 52.18.010, shall specify, by legal geographical areas or other specific designation, the rate to apply to each property by location or other designation, and such other information as is deemed necessary to the proper computation of the service charge to be charged to each property owner subject to the resolution. The county assessor shall determine and identify the personal properties and improvements to real property which are subject to a service charge in each fire district and shall furnish and deliver to the county treasurer a listing of such properties with information describing the location, legal description, and address of the person to whom the statement of service charges is to be mailed, the name of the owner and the value of the property and improvements together with the service charge to apply to each. Service charges levied hereunder shall be certified to the county treasurer for collection in the same manner that is used for the collection of fire protection charges for forest lands protected by the department of natural resources as prescribed by the provisions of RCW 76.04.360 and the same penalties and provisions for collection shall apply. [1974 1st ex.s. c 126 § 3.]

52.18.040 Reimbursement of county for administration and collection expenses. Each fire protection district shall contract, prior to the effective date of a resolution imposing a service charge, for the administration and collection of such service charges by the county treasurer, who shall deduct a percentage amount, as provided by contract as reimbursement of the county for expenses incurred by the county assessor and county treasurer in the administration of the provisions of the resolution and this chapter. The county treasurer shall make distribution each year, as the charges are collected, the amount of the service charges imposed on behalf of each district, less the deduction provided for in the contract. [1974 1st ex.s. c 126 § 4.]

52.18.050 Voter approval of service charges required—Election—Ballot. (1) Any service charge authorized by this chapter shall not be effective unless a

proposition to impose such service charge is approved by a sixty percent majority of the voters of the district voting at a general election or at a special election called by the district for that purpose, held within the fire protection district. Any election held pursuant to this section shall be held not more than twelve months prior to the date on which the first such charge is to be assessed: *Provided*, That such a service charge shall not remain in effect for a period of more than three years unless subsequently reapproved by the voters.

(2) The ballot shall be submitted so as to enable the voters favoring the authorization of a fire protection district service charge to vote "Yes" and those opposed thereto to vote "No" and such ballot shall be in substantially the following form:

"Shall fire protection district No. _____ be authorized to impose a fire protection district service charge each year hereafter in an aggregate amount each year not to exceed an amount equal to sixty percent of the operating budget for the year in which the service charge is to be collected

| | |
|--------------------------|--------------------------|
| YES | NO |
| <input type="checkbox"/> | <input type="checkbox"/> |

[1974 1st ex.s. c 126 § 5.]

52.18.060 Public hearing—Required—Report—Service charge resolution to be filed. (1) Not less than ten days nor more than six months before the election at which the proposition to impose the service charge is submitted as provided in this chapter, the board of fire commissioners of the district shall hold a public hearing specifically setting forth its proposal to impose service charges for the support of its legally authorized activities which will substantially improve the fire protection afforded in the district. A report of the public hearing shall be filed with the county treasurer and be available for public inspection.

(2) Prior to October 15 of each year the board of fire commissioners shall hold a public hearing to review and establish the fire district service charge for the subsequent year.

All resolutions imposing or changing such service charges shall be filed with the county treasurer, together with the record of each public hearing, before October 31 immediately preceding the year in which the service charges are to be collected on behalf of the district. [1974 1st ex.s. c 126 § 6.]

52.18.070 Review board. From the fifteenth to the thirtieth day of November of each year, the board of fire commissioners of any fire protection district imposing a service charge pursuant to the provisions of this chapter shall form a review board and shall, upon complaint in writing of any party aggrieved owning property in such district, reduce the charge of such person who, in their opinion, has been charged too large a sum, to such sum or amount as they believe to be the true, fair, and just amount. [1974 1st ex.s. c 126 § 7.]

52.18.080 Model resolution. The Washington fire commissioners association, as soon as practicable, and with the assistance of the appropriate association of

county prosecutors, shall draft a model resolution for the imposition of the fire protection district service charge authorized by this chapter. [1974 1st ex.s. c 126 § 8.]

52.18.900 Severability—1974 1st ex.s. c 126. If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 1st ex.s. c 126 § 9.]

Chapter 52.20

LOCAL IMPROVEMENT DISTRICTS

Sections

- 52.20.010 L.I.D.'s authorized—Petition or resolution method—Contracts for operation—County treasurer's duty.
- 52.20.020 Dismissal, approval of petition or resolution of intention—Notice of hearing.
- 52.20.025 Hearing and subsequent proceedings to be in accordance with sewer district law.
- 52.20.027 Lands subject to forest protection assessments exempt—Separation of forest type lands for tax and assessment purposes.
- 52.20.050 Warrants against fund.
- 52.20.060 Coupon warrants—Payment—Registration.
- 52.20.070 Contracts not general district obligations.

52.20.010 L.I.D.'s authorized—Petition or resolution method—Contracts for operation—County treasurer's duty. In any instance where for fire protection purposes the acquisition, maintenance and operation of real property, buildings, fire fighting equipment, apparatus and instrumentalities necessary therefor are of special benefit to part or all of the lands in the fire prevention district, the board of fire commissioners shall have authority to include such lands in a local improvement district, and to contract for operating such facilities, and to levy special assessments under a mode of annual installments extending over a period not exceeding twenty years on all property specially benefited by any local improvement, on the basis of the special benefits to pay in whole or in part the damages or costs of any improvements ordered in such fire protection district. The duties devolving upon the city treasurer under said laws are imposed upon the county treasurer for the purposes of this chapter. Such local improvement districts may be initiated either by resolution of the board of fire commissioners or by petition signed by the owners of a majority of the acreage of lands to be included within the local improvement district.

If the petition procedure is followed, said petition shall set forth generally the necessity for the creation of a local improvement district, outline the plan of fire protection to be accomplished, and the means by which the cost of the same shall be financed. Upon receipt of said petition, said district shall at its next regular meeting examine the same. The assessed owners of said lands as shown on the general tax roll in the county treasurer's office, last equalized, shall be prima facie evidence of the ownership of the lands to be included in said local improvement district. If said petition is found sufficient, said district board shall proceed to consider

the same and to determine whether such local improvement appears feasible and of special benefit to the lands concerned.

In case the board of fire commissioners shall desire to initiate the formation of a local improvement district by resolution, it shall first pass a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed district, describing the boundaries thereof, stating the estimated cost and expenses of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, and fixing a date, time and place for a public hearing on the formation of the proposed district. [1961 c 161 § 1; 1939 c 34 § 40; RRS § 5654-140.]

52.20.020 Dismissal, approval of petition or resolution of intention—Notice of hearing. If said petition is found insufficient or if said district board shall determine that such a local improvement district is unfeasible or of no special benefit to the lands concerned, it shall dismiss said petition. If said district board shall approve said petition or adopts a resolution of intention to order an improvement, it shall fix a day, hour and place for hearing the same and shall (1) mail notice of said hearing at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of each lot, tract, parcel of land or other property within the proposed improvement district as shown on the tax rolls of the county treasurer at the address shown thereon, and (2) publish notice of said hearing in a newspaper of general circulation in the county, to be selected by said board, for three consecutive weekly issues thereof published prior to the day of said hearing. The cost of said publication shall be advanced or paid in advance by the petitioners or, in the case of initiation by the board of fire commissioners, such costs shall be paid by the board. Such notice shall describe the boundaries of the proposed local improvement district, shall state that the lands within the said boundaries are proposed to be included within a local improvement district, shall mention the plan of fire protection proposed and the means by which the cost of the same shall be financed, shall state the day, hour and place of hearing on said petition and shall be signed by the secretary of the fire protection district. [1961 c 161 § 2; 1939 c 34 § 41; RRS § 5654-141.]

52.20.025 Hearing and subsequent proceedings to be in accordance with sewer district law. The hearing for which notice is given in RCW 52.20.020 and all subsequent proceedings in connection with the local improvement, including but not limited to the levying, collection and enforcement of local improvement assessments, shall be in accordance with the provisions of law applicable to sewer district local improvement district improvements set forth in chapter 56.20 RCW as now or hereafter amended, and references therein to the board of sewer commissioners and secretary of the board of sewer commissioners shall be deemed references to the board of fire district commissioners and

secretary of the board of fire district commissioners, respectively. [1961 c 161 § 3.]

52.20.027 Lands subject to forest protection assessments exempt—Separation of forest type lands for tax and assessment purposes. Nothing contained in RCW 52.20.010, 52.20.020 and 52.20.025 shall apply to any tracts or parcels of wholly forest type lands within the district which are required to pay forest protection assessments, as required in RCW 76.04.360; however, both the tax levy or special assessments of the district and the forest patrol assessment shall apply on the forest land portion of any tract or parcel which is in the district containing a combination of both forest type lands and nonforest type lands or improvements: *Provided, however,* That the owner shall have the right to have forest type lands of more than twenty acres in extent separated from land bearing improvements and from nonforest type lands for such taxation and assessment purposes upon furnishing to the assessor a written request containing the proper legal description. [1961 c 161 § 5.]

52.20.050 Warrants against fund. In accordance with the means of financing said local improvement district adopted by the district board, said board shall have authority to draw vouchers for the issuance of warrants to the aggregate amount of the equalized current tax roll including special taxes for said local improvement district against the local improvement fund of the district. [1939 c 34 § 44; RRS § 5654–144.]

52.20.060 Coupon warrants—Payment—Registration. Said district board shall also have authority, if in accordance with the adopted means of financing said local improvement district, to issue and sell at par and accrued interest coupon warrants payable within three years from the date thereof exclusively from the local improvement fund of the district. Such coupon warrants shall be payable with semiannual interest to bearer and shall be in such form as the board shall determine and shall state on their face that they are payable exclusively from the local improvement fund of the district and shall be registered in the county treasurer's office, as provided herein for the registry of general coupon warrants of the district. Interest coupons thereon shall be payable on the first day of January and of July. [1970 ex.s. c 56 § 68; 1969 ex.s. c 232 § 90; 1939 c 34 § 45; RRS § 5654–145.]

Purpose, validation—Saving, severability, effective date—1969 ex.s. c 232: See note following RCW 39.44.030.

52.20.070 Contracts not general district obligations. No fire protection district shall be liable under any contract creating an obligation chargeable against the lands of any local improvement district therein, unless such liability and the extent thereof is specifically stated in such contract. [1939 c 34 § 21; RRS § 5654–121.]

Chapter 52.22 WITHDRAWAL

| Sections | |
|-----------|--|
| 52.22.010 | Withdrawal authorized. |
| 52.22.020 | Withdrawal by incorporation of part of district. |
| 52.22.030 | City may not be included within district—Withdrawal of city. |
| 52.22.040 | City withdrawn to determine fire protection methods—Contracts—Joint operations—Sale, lease, etc., of property. |
| 52.22.050 | Taxes and assessments unaffected. |
| 52.22.060 | Commissioners residing in territory withdrawn—Vacancy created. |

52.22.010 Withdrawal authorized. Territory within a fire protection district may be withdrawn therefrom in the same manner provided by law for withdrawal of territory from water districts, as provided by chapter 57.28 RCW. [1955 c 111 § 1.]

52.22.020 Withdrawal by incorporation of part of district. The incorporation of any previously unincorporated land lying within a fire protection district shall operate to automatically withdraw such lands from the fire protection district. [1959 c 237 § 5; 1955 c 111 § 2.]

52.22.030 City may not be included within district—Withdrawal of city. Effective January 1, 1960, every city or town, or portion thereof, which is situated within the boundaries of a fire protection district shall become automatically removed from such fire protection district, and no fire protection district shall thereafter include any city or town, or portion thereof, within its boundaries. [1959 c 237 § 6.]

52.22.040 City withdrawn to determine fire protection methods—Contracts—Joint operations—Sale, lease, etc., of property. A city or town encompassing territory withdrawn under the provisions of chapter 52.22 RCW shall determine the most effective and feasible fire protection for the withdrawn territory, or any part thereof, and the legislative authority of the city or town and the commissioners of the fire protection district may, without limitation on any other powers provided by law:

(1) Enter into contracts to the same extent as fire protection districts and cities and towns may enter into contracts under authority of RCW 52.08.030(3), and

(2) Sell, purchase, rent, lease, or exchange property of every nature. [1959 c 237 § 8.]

52.22.050 Taxes and assessments unaffected. The provisions of RCW 57.28.110 shall apply to territory withdrawn from a fire protection district under the provision of chapter 52.22 RCW. [1959 c 237 § 7.]

52.22.060 Commissioners residing in territory withdrawn—Vacancy created. Fire protection district commissioners residing in territory withdrawn from a fire protection district shall be replaced in the manner provided for the filling of vacancies in RCW 52.12.050. [1959 c 237 § 9.]

Chapter 52.24
MERGERS

Sections

| | |
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| 52.24.010 | Merger of districts authorized. |
| 52.24.020 | Petition—Contents. |
| 52.24.030 | Action on petition. |
| 52.24.040 | Duty of county auditor—Special election. |
| 52.24.050 | Vote required—Status after favorable vote. |
| 52.24.060 | Merger by petition. |
| 52.24.070 | Obligations of merged districts. |
| 52.24.080 | Delivery of property and funds. |
| 52.24.085 | Board membership upon merger of districts—Subsequent boards. |
| 52.24.090 | Merger of part of district with adjacent district. |
| 52.24.100 | Merger of part of district with adjacent district—When election unnecessary. |

52.24.010 Merger of districts authorized. A fire protection district organized under chapter 34, Laws of 1939 as amended may merge with another such district lying adjacent thereto, upon such terms and conditions as they agree upon, in the manner hereinafter provided. The district desiring to merge with another district shall hereinafter be called the "merging district," and the district into which the merger is to be made shall be called the "merger district." [1947 c 254 § 12; Rem. Supp. 1947 § 5654–151a.]

Reviser's note: For codification of 1939 c 34, see note following RCW 52.04.020.

52.24.020 Petition—Contents. To effect such a merger, a petition therefor shall be filed with the board of the merger district by the commissioners of the merging district. The commissioners of the merging district may sign and file the petition upon their own initiative, and they shall file such a petition when it is signed by fifteen percent of the qualified electors resident in the merging district and presented to them. The petition shall state the reasons for the merger; give a detailed statement of the district's finances, listing its assets and liabilities; state the terms and conditions under which the merger is proposed; and pray for the merger. [1947 c 254 § 13; Rem. Supp. 1947 § 5654–151b.]

52.24.030 Action on petition. The board of the merger district may, by resolution, reject the petition, or it may concur therein as presented, or it may modify the terms and conditions of the proposed merger, and shall transmit the petition, together with a copy of its resolution thereon to the merger [merging] district. If the petition is concurred in as presented or as modified, the board of the merging district shall forthwith present the petition to the auditor of the county in which the merging district is situated, who shall within thirty days examine the signatures thereon and certify to the sufficiency or insufficiency thereof, and for that purpose he shall have access to all registration books and records in the possession of the registration officers of the election precincts included, in whole or in part, within the merging district. Such books and records shall be prima facie evidence of truth of the certificate. No signatures may be withdrawn from the petition after the filing. [1947 c 254 § 14; Rem. Supp. 1947 § 5654–151c.]

52.24.040 Duty of county auditor—Special election. If the auditor finds that the petition contains the signatures of a sufficient number of qualified electors, he shall return it, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon such board shall adopt a resolution, calling a special election in the merging district, at which shall be submitted to the electors thereof, the question of the merger. [1947 c 254 § 15; Rem. Supp. 1947 § 5654–151d.]

Elections: Title 29 RCW.

52.24.050 Vote required—Status after favorable vote. The board of the merging district shall notify the board of the merger district of the results of the election. If three-fifths of the votes cast at the election favor the merger, the respective district boards shall adopt concurrent resolutions, declaring the districts merged, under the name of the merger district. Thereupon the districts are merged into one district, under the name of the merger district; the merging district is dissolved without further proceedings; and the boundaries of the merger district are thereby extended to include all the area of the merging district. Thereafter the legal existence cannot be questioned by any person by reason of any defect in the proceedings had for the merger. [1947 c 254 § 16; Rem. Supp. 1947 § 5654–151e.]

52.24.060 Merger by petition. If three-fifths of all the qualified electors in the merging district sign the petition to merge, no election on the question of the merger is necessary. In which case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of merger in the same manner and to the same effect as if the merger had been authorized by an election. [1947 c 254 § 17; Rem. Supp. 1947 § 5654–151f.]

52.24.070 Obligations of merged districts. None of the obligations of the merged districts or of a local improvement district therein shall be affected by the merger and dissolution, and all land liable to be assessed to pay any of such indebtedness shall remain liable to the same extent as if the merger had not been made, and any assessments theretofore levied against the land shall remain unimpaired and shall be collected in the same manner as if no merger had been made. The commissioners of the merged district shall have all the powers possessed at the time of the merger by the commissioners of the two districts, to levy, assess and cause to be collected all assessments against any land in both districts which may be necessary to provide for the payment of the indebtedness thereof, and until the assessments are collected and all indebtedness of the districts paid, separate funds shall be maintained for each district as were maintained before the merger: *Provided*, That the board of the merged district may, with the consent of the creditors of the districts merged, cancel any or all assessments theretofore levied, in accordance with the terms and conditions of the merger, to the end

that the lands in the respective districts shall bear their fair and proportionate share of such indebtedness. [1947 c 254 § 18; Rem. Supp. 1947 § 5654-151g.]

52.24.080 Delivery of property and funds. The commissioners of the merging district shall, forthwith upon completion of the merger, transfer, convey, and deliver to the merged district all property and funds of the merging district, together with all interest in and right to collect any assessments theretofore levied. [1947 c 254 § 19; Rem. Supp. 1947 § 5654-151h.]

52.24.085 Board membership upon merger of districts—Subsequent boards. Whenever two fire protection districts merge, the board of fire commissioners of the merged fire protection district shall consist of the six of the original fire commissioners. At the next three elections for fire commissioners the number of fire commissioners for the merged district shall be reduced from six to five commissioners at the first election, from five to four commissioners in the second election, and from four to three commissioners in the third election and thereafter, the board of fire commissioners shall remain at three fire commissioners. In order to achieve this prescribed reduction of fire commissioners for the merged district, at each of the three elections referred to herein there shall be elected only one fire commissioner instead of two and thereafter, fire commissioners shall be elected in the same number as is prescribed for all of the fire protection districts of this state.

Whenever more than two fire protection districts merge, the board of fire commissioners shall consist of one commissioner from each of the original districts to be selected by the commissioners from each such original district. At the time of the next general election occurring thirty or more days after the merger, three commissioners shall be elected. The candidate receiving the highest number of votes shall serve for a term of six years, the candidate receiving the next highest number of votes shall serve for a term of four years, and the candidate receiving the next highest number of votes shall serve for a term of two years. Thereafter fire commissioners shall be elected in the same manner as is prescribed for all fire protection districts of this state. [1971 c 55 § 1.]

52.24.090 Merger of part of district with adjacent district. A part of one district may be transferred and merged with an adjacent district whenever such area can be better served by the merged district. To effect such a merger a petition, signed by not less than fifteen percent of the qualified electors residing in the area to be merged, shall be filed with the commissioners of the merging district. Such petition shall be promoted by one or more qualified electors within the area to be transferred. If the commissioners of the merging district act favorably upon the petition, then the petition shall be presented to the commissioners of the merger district. If the commissioners of the merger district act favorably upon the petition, an election shall be called in the area merged.

In the event that either board of fire district commissioners should not concur with the petition, the petition may then be presented to a county review board established for such purposes, if there be no county review board for such purposes then to the state review board and if there be no state review board, then to the county commissioners of the county in which the area to be merged is situated, who shall decide if the area can be better served by such a merger; upon an affirmative decision an election shall be called in the area merged.

A majority of the votes cast shall be necessary to approve the transfer. [1965 ex.s. c 18 § 2; 1963 c 42 § 1; 1953 c 176 § 5.]

52.24.100 Merger of part of district with adjacent district—When election unnecessary. If three-fifths of all the qualified electors in the area to be merged sign a petition to merge the districts, no election on the question of the merger is necessary, in which case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the boards of the merging districts. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of transfer in the same manner and to the same effect as if the same had been authorized by an election. [1953 c 176 § 6.]

**Chapter 52.28
BURNING PERMITS**

Sections
 52.28.010 Permits authorized—Resolution.
 52.28.020 Resolution to be published and posted.
 52.28.030 Content of permits.
 52.28.040 Duties of permittee.
 52.28.050 Penalty.

Forest protection: Chapter 76.04 RCW.

52.28.010 Permits authorized—Resolution. No person, firm or corporation shall start or continue, or cause to be started or continued, an open fire on any cleared or cultivated land within a fire protection district, without a written permit therefor, issued by authority of the district, in any such district in which the commissioners thereof have adopted and published a resolution assuming the privilege of issuing such permits. No fire district shall issue a burning permit for a fire on any forest or cut over land. [1947 c 254 § 20; Rem. Supp. 1947 § 5654-151i.]

52.28.020 Resolution to be published and posted. If the commissioners of such a district desire to assume the privilege of issuing such fire permits, they shall adopt a resolution to that effect, and publish it once a week for three consecutive weeks in a newspaper published in the county and of general circulation in the district and post it in three public places in the district. The affidavit of publication by the publisher and of the clerk of the district of the posting shall be filed in the records of the commissioners and shall be prima facie evidence of such publication and posting. Ten days after such posting and the last publication, the resolution

shall take effect. [1947 c 254 § 21; Rem. Supp. 1947 § 5654-151j.]

52.28.030 Content of permits. Such permits shall be issued upon request, without charge, by the persons authorized by the commissioners so to do, when the issuing officer deems it safe to do so. The permit shall designate the premises and the exact location thereon where the fire may be started and continued; the nature of the material to be burned; the time limit of the permit; and may contain any special requirements pertaining to the fire and the control thereof as the issuing officer deems necessary for safety. [1947 c 254 § 22; Rem. Supp. 1947 § 5654-151k.]

52.28.040 Duties of permittee. The permittee shall comply with all the terms and conditions of the permit, and shall keep a responsible person in charge of the fire at all times, who shall hold the fire under control and not permit it to spread to other property or structures, and shall thoroughly extinguish the fire when the authorized burning is completed. The possession of such a permit shall not relieve the permittee from liability for any damages resulting from the fire for which he may otherwise be liable. [1947 c 254 § 23; Rem. Supp. 1947 § 5654-151l.]

Crimes relating to fires: Chapter 9.40 RCW, RCW 76.04.220.

Liability for fire damage: RCW 4.24.040, 4.24.050, 4.24.060, 76.04.380, 76.04.390.

52.28.050 Penalty. The violation of or failure to comply with any provision of this chapter pertaining to fire permits, or of any term or condition of the permit, is a misdemeanor. [1947 c 254 § 24; Rem. Supp. 1947 § 5654-151m.]

Chapter 52.32 VALIDATION

Section

52.32.010 Legislative validation.

52.32.010 Legislative validation. The respective areas, organized and established or attempted to be organized and established under the authority granted in chapter 34, Laws of 1939, as amended, which since their organization and establishment or attempted organization and establishment have continuously maintained their organization as fire protection districts established under the authority of said statutes are hereby declared to be duly organized fire protection districts existing under and by virtue of the provisions of said statutes having in each case, the boundaries set forth in the respective organization proceedings of each of them as shown by the files and records in the offices of the board of county commissioners and auditor of the county in which the particular area lies. [1947 c 230 § 1; 1945 c 162 § 1; 1943 c 121 § 1; 1941 c 70 § 1; 1939 c 34 § 1; Rem. Supp. 1947 § 5654-151o.]

Reviser's note: For codification of 1939 c 34, see note following RCW 52.04.020.

Chapter 52.34 VALIDATION PROCEDURE

Sections

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| 52.34.010 | Special proceedings for judicial confirmation of organization, warrants, contracts, etc. |
| 52.34.020 | Petition. |
| 52.34.030 | Hearing, date of, to be fixed—Notice. |
| 52.34.040 | Demurrer or answer. |
| 52.34.050 | Pleading and practice—Motion for new trial. |
| 52.34.060 | Jurisdiction of court. |
| 52.34.070 | Minor irregularities to be disregarded. |
| 52.34.080 | Costs. |
| 52.34.090 | Appeal. |

52.34.010 Special proceedings for judicial confirmation of organization, warrants, contracts, etc. The board of fire commissioners of any fire protection district now existing or which may hereafter be organized under the laws of the state of Washington may commence a special proceeding in the superior court of the state of Washington in and by which the proceedings for the organization of the fire district or for the formation of any local improvement district therein, or proceedings for the authorization, issuance and sale of coupon warrants, either of the fire district or for a local improvement district therein, or both, whether such coupon warrants, or any of them, have or have not been sold, or proceedings for any contract of the district involving the fire district or any local improvement district therein and any other proceedings which may affect the legality of the proceedings concerned or any or all of the proceedings above outlined, may be judicially examined, approved and confirmed. [1947 c 255 § 1; Rem. Supp. 1947 § 5654-153a. Formerly RCW 52.32.020.]

Severability—1947 c 255: "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 of any section, provision, or part thereof not adjudged to be invalid or unconstitutional." [1947 c 255 § 10.] This applies to RCW 52.34.010-52.34.090.

52.34.020 Petition. The board of fire commissioners of the fire protection district shall file in the superior court of the county in which the fire protection district was organized, a petition praying in effect that the proceedings aforesaid or any or all of them be examined, approved and confirmed by the court. The petition shall state the facts showing any of the proceedings which the petition asks the court to examine, approve and confirm, but need allege only generally that the fire protection district was duly organized and that the first board of fire commissioners was duly elected. [1947 c 255 § 2; Rem. Supp. 1947 § 5654-153b. Formerly RCW 52.32.030.]

52.34.030 Hearing, date of, to be fixed—Notice. The court shall by court order fix the time for the hearing of said petition and direct the clerk of the court to give notice of the filing of said petition and of the time and place fixed for the hearing thereof. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petition and that any person interested in any of the proceedings sought by the petition to be examined, approved and confirmed by the court, may on or before the day fixed for the hearing of

said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the board of fire commissioners of ----- county fire protection district No. ----- (giving the county and its number or any other name by which it is officially designated), praying that the proceedings (naming them as set out in the prayer of the petition), be examined, approved and confirmed by said court, and shall be signed by the clerk.

The notice shall be given by posting and publishing in the same manner and for the same length of time that the notice of the hearing on the petition before the board of county commissioners to form the district was required by law to be posted and published, and the same may be published in any legal newspaper designated in the order of the court fixing the time and place of the hearing of the petition and directing the clerk of the court to give notice thereof. [1947 c 255 § 3; Rem. Supp. 1947 § 5654–153c. Formerly RCW 52.32.040.]

Notice, publication and posting: RCW 52.04.050.

52.34.040 Demurrer or answer. Any person interested in said fire protection district, or in any local improvement district therein, involved in the petition or in any proceedings sought by the petition to be examined, approved and confirmed by the court, may demur to or answer said petition. The statutes of this state respecting demurrers and answers to verified complaints shall be applicable to demurrers and answers to said petition. The person so demurring to or answering said petition shall be defendant to said special proceeding, and the board of fire commissioners shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer must, for the purposes of said special proceedings, be taken as true, and each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. [1947 c 255 § 4; Rem. Supp. 1947 § 5654–153d. Formerly RCW 52.32.050.]

Pleadings: Chapters 4.32, 4.36 RCW.

52.34.050 Pleading and practice—Motion for new trial. The rules of pleading and practice governing civil actions where not inconsistent with the provisions of this chapter, are applicable to the special proceedings herein provided for. A motion for a new trial must be made upon the minutes of the court and in case of an order granting a new trial, the same must specify the issue to be reexamined on such new trial, and the findings of the court upon the other issues shall not be affected by such order granting a new trial. [1947 c 255 § 5; Rem. Supp. 1947 § 5654–153e. Formerly RCW 52.32.060.]

New trials: Chapter 4.76 RCW.

52.34.060 Jurisdiction of court. Upon the hearing of such special proceedings, the court shall have power and jurisdiction to examine and determine the legality and validity of, and to approve and confirm, each and all of the proceedings for the organization of the fire

protection district and for the formation of any local improvement district therein under the provisions of the law relating to such districts from and including the petition for the organization of the fire district and for the formation of any local improvement district therein and all other proceedings which affect the legality of said districts, or the validity and legality of any coupon warrants either of the fire district or for a local improvement district therein and all proceedings had by the fire district for any contract of the district involving the fire district or any local improvement district therein, and any other proceeding which may affect the legality of any of the proceedings concerned. [1947 c 255 § 6; Rem. Supp. 1947 § 5654–153f. Formerly RCW 52.32.070.]

52.34.070 Minor irregularities to be disregarded. The court shall have full authority and jurisdiction to consider any question of laches, estoppel and other infirmities in the position and claims of the defendants to question the legality of the proceedings sought by the plaintiff to be confirmed by the court and to pass upon and determine them. The court, in inquiring into the regularity, legality or correctness of any of the proceedings sought by the board of fire commissioners in its petition to be examined, approved and confirmed by the court, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings, and the court may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other or subsequent parts of the proceedings, or it may approve and confirm all of such proceedings, and make and enter its decree accordingly. [1947 c 255 § 7; Rem. Supp. 1947 § 5654–153g. Formerly RCW 52.32.080.]

52.34.080 Costs. The court shall find and determine, in these special proceedings, whether the notice of the filing of the petition and of the time and place of hearing thereof has been duly posted and published for the time and in the manner prescribed in this chapter. The costs of the special proceedings may be allowed and apportioned between all the parties, in the discretion of the court. [1947 c 255 § 8; Rem. Supp. 1947 § 5654–153h. Formerly RCW 52.32.090.]

52.34.090 Appeal. An appeal from an order granting or refusing a new trial, or from the judgment, in the special proceedings must be taken by the party aggrieved within thirty days after the entry of said order or said judgment. [1947 c 255 § 9; Rem. Supp. 1947 § 5654–153i. Formerly RCW 52.32.100.]

Chapter 52.36

MISCELLANEOUS PROVISIONS

| | |
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| Sections | |
| 52.36.010 | Special elections—Qualifications of electors. |
| 52.36.020 | Property of public agency included within district— Contracts for services. |
| 52.36.025 | Use of equipment and personnel outside district— Governmental function. |

- 52.36.027 Use of equipment and personnel outside district—
Duty of fireman deemed duty for district—Benefits not impaired.
- 52.36.040 Existing districts may come under this title.
- 52.36.050 Firemen's relief and pensions.
- 52.36.060 Civil service for employees.
- 52.36.065 Civil service for employees—Residency not grounds for discharge.
- 52.36.070 Claims against districts.
- 52.36.080 Fire protection services provided by municipal corporation—Financial and other assistance by county authorized.

Elections: Title 29 RCW.

Fire chief or sheriff shall report certain fires to state fire marshal: RCW 48.48.060.

Looting burning building: RCW 9.54.090.

52.36.010 Special elections—Qualifications of electors. Special elections submitting propositions to the electors of the district may be called at any time upon resolution of the board of district fire commissioners, and shall be called, noticed, held, conducted and canvassed in the same manner and by the same officials as provided herein for the election to determine whether the district shall be created. The qualifications for electors at all district elections shall be the same as for elections at general state and county elections. [1939 c 34 § 28; RRS § 5654-128.]

52.36.020 Property of public agency included within district—Contracts for services. Wherever a fire protection district has been organized which includes within its area or is adjacent to, buildings and equipment, except those leased to a nontax exempt person or organization, owned by the legislative or administrative authority of a state agency or institution or a municipal corporation, the agency or institution or municipal corporation involved shall contract with such district for fire protection services necessary for the protection and safety of personnel and property pursuant to the provisions of chapter 39.34 RCW, as now or hereafter amended: *Provided*, That nothing in this section shall be construed to require that any state agency, institution, or municipal corporation contract for services which are performed by the staff and equipment of such state agency, institution, or municipal corporation: *Provided further*, That nothing in this section shall apply to state agencies or institutions or municipal corporations which are receiving fire protection services by contract from another municipality, city, town or other entities: *And provided further*, That school districts shall receive fire protection services from the fire protection districts in which they are located without the necessity of executing a contract for such fire protection services: *Provided further*, That prior to September 1, 1974 the superintendent of public instruction, the insurance commissioner, the director of program planning and fiscal management, and the executive director of the Washington fire commissioners association, or their designees, shall develop criteria to be used by the insurance commissioner in establishing uniform rates governing payments to fire districts by school districts for fire protection services. On or before September 1, 1974, the insurance commissioner shall establish such rates to be payable by school districts on or before

January 1st of each year commencing January 1, 1975, payable July 1, 1975: *And provided further*, That beginning with the 1975-77 biennium and in each biennium thereafter the superintendent of public instruction shall present in his budget submittal to the governor an amount sufficient to reimburse affected school districts for the moneys necessary to pay the costs of the uniform rates established by the insurance commissioner. [1974 1st ex.s. c 88 § 1; 1973 1st ex.s. c 64 § 1; 1941 c 139 § 1; Rem. Supp. 1941 § 5654-143a.]

Effective date—1974 1st ex.s. c 88: "This 1974 amendatory act shall take effect on July 1, 1974." [1974 1st ex.s. c 88 § 2.]

Effective date—1973 1st ex.s. c 64: "This 1973 amendatory act shall take effect on July 1, 1974." [1973 1st ex.s. c 64 § 2.]

52.36.025 Use of equipment and personnel outside district—Governmental function. Every fire protection district may permit, under conditions prescribed by the fire commissioners of such district, such designated equipment and the personnel operating the same to go outside of the boundaries of such district, for the purpose of extinguishing or aiding in the extinguishing or control of fires. Any use made of such equipment or personnel under the authority of this section shall be deemed an exercise of a governmental function of such district. [1969 c 88 § 2.]

52.36.027 Use of equipment and personnel outside district—Duty of fireman deemed duty for district—Benefits not impaired. Whenever a fireman engages in any duty outside the boundaries of such district such duty shall be considered as part of his duty as fireman for the district, and a fireman who is injured while engaged in such duties outside the boundaries of such district shall be entitled to the same benefits that he or his dependents would be entitled to receive had he been injured within the district. [1969 c 88 § 3.]

52.36.040 Existing districts may come under this title. Any fire protection district established and existing under the provisions of chapter 60 of the Laws of 1933, extraordinary session, may be made to conform to the provisions of this act by preparing, certifying and delivering its annual assessment roll to the board of county commissioners on and after November 1, 1939, in ample time for it to make tax levies for the purpose of the district, and holding its biennial election of the fire commissioners as herein provided. [1939 c 34 § 48; RRS § 5654-148.]

Reviser's note: "this act", see note following RCW 52.04.020.

52.36.050 Firemen's relief and pensions. See chapters 41.16, 41.18 and 41.24 RCW.

52.36.060 Civil service for employees. Any fire protection district organized and existing under chapter 34, Laws of 1939, and subsequent amendments thereof, having a full paid fire department, shall have authority by resolution of its board of fire commissioners to provide for civil service in its fire department in the same manner with the same powers and with the same force and effect as to such district as that provided by chapter

41.08 RCW, for cities, towns, and municipalities, including restrictions against the discharge of an employee because of his residence outside the limits of the city, town, municipality, or fire protection district. [1971 ex.s. c 256 § 2; 1949 c 72 § 1; Rem. Supp. 1949 § 5654–120a.]

52.36.065 Civil service for employees—Residency not grounds for discharge. It is the purpose of RCW 52.36.060 and this section to recognize and to give effect to the existing public policy of this state, expressly declared in RCW 35.21.200 and impliedly recognized in RCW 52.36.060 and 35A.21.040, that residence of an employee outside the limits of a city, town, or fire protection district shall not be grounds for discharge of any regularly appointed civil service employee otherwise qualified. [1971 ex.s. c 256 § 1.]

52.36.070 Claims against districts. See chapter 53.52 RCW.

52.36.080 Fire protection services provided by municipal corporation—Financial and other assistance by county authorized. See RCW 36.32.470.

TITLE 53

PORT DISTRICTS

Chapters

- 53.04 Formation.
- 53.06 Coordination of administrative programs and operations.
- 53.08 Powers.
- 53.12 Commissioners—Elections.
- 53.16 Revision of commissioner districts.
- 53.18 Employment relations—Collective bargaining and arbitration.
- 53.20 Harbor improvements.
- 53.25 Industrial development districts—Marginal lands.
- 53.29 Trade center act.
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- 53.34 Toll facilities.
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- 53.36 Finances.
- 53.39 National emergency revenue bonds.
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- 53.43 Validation of indebtedness in certain districts—Funding or refunding indebtedness—1941 act.
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- 53.46 Consolidation.
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- 53.49 Disposition of funds on dissolution of certain districts.
- 53.54 Aircraft noise abatement.

Airport districts: Chapter 14.08 RCW.

Assessments against public lands: Chapter 79.44 RCW.

Conveyance of real property by public bodies—Recording: RCW 65.08.095.

Disincorporation of water and other districts in class A or AA counties: Chapter 57.90 RCW.

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Outdoor recreation land acquisition or improvement under marine recreation land act: Chapter 43.99 RCW.

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Title to certain second class shorelands vested in port districts: RCW 79.16.400.

Vacation of streets or alleys abutting on bodies of water, prohibited unless to be used by city or port district for port, recreational, educational, etc. purposes: RCW 35.79.030.

Chapter 53.04 FORMATION

Sections

- 53.04.010 Port districts authorized—Purposes.
- 53.04.015 Port districts in areas lacking appropriate bodies of water—Authorized—Purposes.
- 53.04.016 Port districts in areas lacking appropriate bodies of water—Authority an additional and concurrent method.
- 53.04.017 Port districts in areas lacking appropriate bodies of water—Elections.
- 53.04.020 Formation of district.
- 53.04.060 District declared formed.
- 53.04.070 Expense of election.
- 53.04.080 Annexation of territory—Petition—Election.
- 53.04.085 Petition by electors of area desiring annexation to port district.
- 53.04.100 Order of annexation—Liability of area annexed.
- 53.04.110 Change of name.

Elections: Title 29 RCW.

53.04.010 Port districts authorized—Purposes. Port districts are hereby authorized to be established in the various counties of the state for the purposes of acquisition, construction, maintenance, operation, development and regulation within the district of harbor improvements, rail or motor vehicle transfer and terminal facilities, water transfer and terminal facilities, air transfer and terminal facilities, or any combination of such transfer and terminal facilities, and other commercial transportation, transfer, handling, storage and terminal facilities, and industrial improvements. [1963 c 147 § 1; 1911 c 92 § 1; RRS § 9688.]

Construction—1911 c 92: "This act shall not be construed to repeal, amend or modify any law heretofore enacted providing a method of harbor improvement, regulation or control in this state, but shall be held to be an additional and concurrent method providing for such purpose." [1911 c 92 § 14.]

Establishment of harbor lines: State Constitution Art. 15 § 1 (Amendment 15).

53.04.015 Port districts in areas lacking appropriate bodies of water—Authorized—Purposes. In areas which lack appropriate bodies of water so that harbor improvements cannot be established, port districts are hereby authorized to be established under the laws of the state, for the purposes for which port districts may be established under RCW 53.04.010, and such port

districts shall have all of the powers, privileges and immunities conferred upon all other port districts under the laws of this state, including the same powers and rights relating to municipal airports that other port districts now have or hereafter may be granted. [1963 c 147 § 2; 1959 c 94 § 1.]

53.04.016 Port districts in areas lacking appropriate bodies of water—Authority an additional and concurrent method. RCW 53.04.015 shall not be construed to repeal, amend or modify any law heretofore enacted providing a method of harbor improvement, regulation or control; acquisition, maintenance and operation of municipal airports; or industrial development; but shall be held to be an additional and concurrent method providing such purposes. [1959 c 94 § 2.]

53.04.017 Port districts in areas lacking appropriate bodies of water—Elections. All elections with respect to any such port districts authorized by RCW 53.04.015 and 53.04.016 shall be held, conducted and the results canvassed in the same manner and at the same time as now or hereafter provided by law for other port districts. [1959 c 94 § 3.]

53.04.020 Formation of district. At any general election or at any special election which may be called for that purpose, the board of county commissioners of any county in this state may, or on petition of ten percent of the qualified electors of such county based on the total vote cast in the last general county election, shall, by resolution submit to the voters of such county the proposition of creating a port district which shall be coextensive with the limits of such county as now or hereafter established. Such petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereof and certify to the sufficiency or insufficiency thereof, and for such purpose the county auditor shall have access to all registration books in the possession of the officers of any incorporated city or town in such proposed port district. If such petition be found to be insufficient, it shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his certificate thereto. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the board of county commissioners, who shall submit such proposition at the next general election or, if such petition so requests, the board of county commissioners shall, at their first meeting after the date of such certificate, by resolution, call a special election to be held not less than thirty days nor more than sixty days from the date of such certificate. The notice of election shall state the boundaries of the proposed port district and the object of such election. In submitting the said question

to the voters for their approval or rejection, the proposition shall be expressed on said ballot substantially in the following terms:

"Port of _____, Yes." (giving the name of the principal seaport city within such proposed port district, or if there be more than one city of the same class within such district, such name as may be determined by the board of county commissioners).

"Port of _____, No." (giving the name of the principal seaport city within such port district, or if there be more than one city of the same class within such district, such name as may be determined by the board of county commissioners). [1971 ex.s. c 157 § 1; 1913 c 62 § 1; 1911 c 92 § 2; RRS § 9689. Formerly RCW 53.04.020 through 53.04.040.]

Effective date—1971 ex.s. c 157: "The effective date of this act shall be May 1, 1972." [1971 ex.s. c 157 § 4.] This applies to RCW 53.04.020 and 53.04.085, and to the repeal of RCW 53.04.050.

53.04.060 District declared formed. Within five days after an election held under the provisions of RCW 53.04.020, the board of county commissioners shall canvass the returns, and if at such election a majority of the voters voting upon the proposition shall vote in favor of the formation of the district, the board of county commissioners shall so declare in its canvass of the returns of such election, and the port district shall then be and become a municipal corporation of the state of Washington and the name of such port district shall be "Port of _____" (inserting the name appearing on the ballot). [1959 c 17 § 2. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.04.070 Expense of election. All expenses of elections for the formation of such port districts shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the port district, if formed. [1959 c 17 § 6. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.04.080 Annexation of territory—Petition—Election. At any general election or at any special election which may be called for that purpose the board of county commissioners of any county in this state in which there exists a port district which is not coextensive with the limits of the county, shall on petition of the commissioners of such port district, by resolution, submit to the voters residing within the limits of any territory which the existing port district desires to annex or include in its enlarged port district, the proposition of enlarging the limits of such existing port districts so as to include therein the whole of the territory embraced within the boundaries of such county, or such territory as may be described in said petition by legal subdivisions. Such petition shall be filed with the county auditor, who shall forthwith transmit the same to the board of county commissioners, who shall submit such proposition at the next general election, or, if such petition so request, the board of county commissioners, shall at their first meeting after the date of filing such

petition, by resolution, call a special election to be held not less than thirty days nor more than sixty days from the date of filing said petition. The notice of election shall state the boundaries of the proposed enlarged port district and the object of the special election. In submitting said question to the voters of the territory proposed to be annexed or included for their approval or rejection, the proposition shall be expressed on the ballots substantially in the following terms:

"Enlargement of the port of -----, yes." (Giving then name of the port district which it is proposed to enlarge);

"Enlargement of the port of -----, no." (Giving the name of the port district which it is proposed to enlarge).

Such election, whether general or special, shall be held in each precinct wholly or partially embraced within the limits of the territory proposed to be annexed or included and shall be conducted and the votes cast thereat counted, canvassed, and the returns thereof made in the manner provided by law for holding general or special county elections. [1935 c 16 § 1; 1921 c 130 § 1; RRS § 9707. Formerly RCW 53.04.080 and 53.04.090.]

Elections: Title 29 RCW.

53.04.085 Petition by electors of area desiring annexation to port district. If an area, not currently part of an existing port district desires to be annexed to a port district in the same county, upon receipt of a petition bearing the names of ten percent of the qualified electors residing within the proposed boundaries of the area desiring to be annexed, the commissioners of such port district shall petition the board of county commissioners to annex such territory, as provided in RCW 53.04.080. [1971 ex.s. c 157 § 2.]

Effective date—1971 ex.s. c 157: See note following RCW 53.04.020.

53.04.100 Order of annexation—Liability of area annexed. If a majority of all the votes cast at any such election upon the proposition of enlarging such port district shall be for the "Enlargement of the port of -----, yes" then and in that event the board of county commissioners shall enter an order declaring such port district enlarged so as to embrace within the limits thereof the territory described in the petition for such election, and thereupon the boundaries of said port district shall be so enlarged and the commissioners thereof shall have jurisdiction over the whole of said district as enlarged to the same extent, and with like power and authority, as though the additional territory had been originally embraced within the boundaries of the existing port district: *Provided, however,* That none of the lands or property embraced within the territory added to and incorporated within such port district shall be liable to assessment for the payment of any outstanding bonds, warrants or other indebtedness of such original port district, but such outstanding bonds, warrants or other indebtedness, together with interest thereon, shall be paid exclusively from assessments levied and collected on the lands and property embraced

within the boundaries of the preexisting port district. [1921 c 130 § 2; RRS § 9708.]

53.04.110 Change of name. Any port district now existing or which may hereafter be organized under the laws of the state of Washington is hereby authorized to change its corporate name under the following conditions and in the following manner:

(1) On presentation, at least thirty days before any general port election to be held in said port district, of a petition to the commissioners of any port district now existing or which may hereafter be established under the laws of the state of Washington, signed by not less than two hundred fifty electors residing within said port district and asking that the corporate name of said port district be changed, it shall be the duty of said commissioners to submit to the electors of said port district at the next general port election held in said port district the proposition as to whether the corporate name of said port shall be changed.

(2) Said petition shall contain the present corporate name of said port district and the corporate name which is proposed to be given to said port district.

(3) On submitting said proposition to the electors of said port district it shall be the duty of said port commissioners to cause to be printed on the official ballot used at said election the following proposition:

"Shall the corporate name, 'Port of -----' be changed to 'Port of -----'YES
"Shall the corporate name, 'Port of -----' be changed to 'Port of -----'NO"

(4) At the time when the returns of said general election shall be canvassed by the commissioners of the said port district, it shall be the duty of said commissioners to canvass the vote upon said proposition so submitted, recording in their record the result of said canvass.

(5) Should a majority of the electors of said port district voting at said general port election vote in favor of said proposition it shall be the duty of said port commissioners to certify said fact to the auditor of the county in which said port district shall be situated and to the secretary of state of the state of Washington, under the seal of said port district. On and after the filing of said certificate with the county auditor as aforesaid and with the secretary of state of the state of Washington, the corporate name of said port district shall be changed, and thenceforth said port district shall be known and designated in accordance therewith. [1929 c 140 § 1; RRS § 9689-1.]

**Chapter 53.06
COORDINATION OF ADMINISTRATIVE
PROGRAMS AND OPERATIONS**

- Sections
- 53.06.010 Declaration of necessity.
- 53.06.020 Actions required of commissions—Joint reports to governor and legislature.

- 53.06.030 Washington public ports association as coordinating agency—Purposes, powers and duties.
- 53.06.040 Dues and assessments may be paid association from district funds—Limitation on amount.
- 53.06.050 Further action by commissions authorized—Meetings.
- 53.06.060 Financial records of association subject to audit by division of municipal corporations.

53.06.010 Declaration of necessity. The necessity and desirability of coordinating the administration programs and operations of all the port districts in this state is recognized and declared as a matter of legislative determination. [1961 c 31 § 1.]

53.06.020 Actions required of commissions—Joint reports to governor and legislature. It shall be the duty of the port district commissions in the state to take such action to effect the coordination of the administrative programs and operations of each port district in the state and to submit to the governor and the legislature biennially a joint report or joint reports containing the recommendations for procedural changes which would increase the efficiency of the respective port districts. [1961 c 31 § 2.]

53.06.030 Washington public ports association as coordinating agency—Purposes, powers and duties. The port district commissions in this state are empowered to designate the Washington public ports association as a coordinating agency through which the duties imposed by RCW 53.06.020 may be performed, harmonized or correlated. The purposes of the Washington public ports association shall be:

(1) To initiate and carry on the necessary studies, investigations and surveys required for the proper development and improvement of the commerce and business generally common to all port districts, and to assemble and analyze the data thus obtained and to cooperate with the state of Washington, port districts both within and without the state of Washington, and other operators of terminal and transportation facilities for this purpose, and to make such expenditures as are necessary for these purposes, including the proper promotion and advertising of all such properties, utilities and facilities;

(2) To exchange information relative to port construction, maintenance, operation, administration and management;

(3) To promote and encourage port development along sound economic lines;

(4) To promote and encourage the development of transportation, commerce and industry;

(5) To operate as a clearing house for information, public relations and liaison for the port districts of the state and to serve as a channel for cooperation among the various port districts and for the assembly and presentation of information relating to the needs and requirements of port districts to the public. [1961 c 31 § 3.]

53.06.040 Dues and assessments may be paid association from district funds—Limitation on amount. Each port district which designates the Washington public

ports association as the agency through which the duties imposed by RCW 53.06.020 may be executed is authorized to pay dues and/or assessments to said association from port district funds in any calendar year in an amount not exceeding a sum equal to the amount which would be raised by a levy of one cent per thousand dollars of assessed value against the taxable property within the port district. [1973 1st ex.s. c 195 § 55; 1970 ex.s. c 47 § 3; 1961 c 31 § 4.]

~~Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.~~

53.06.050 Further action by commissions authorized—Meetings. The port district commissions are authorized to take such further action as they deem necessary to comply with the intent of this chapter, including the attendance at state and district meetings which may be required to formulate the reports provided for in RCW 53.06.020. [1961 c 31 § 5.]

53.06.060 Financial records of association subject to audit by division of municipal corporations. The financial records of the Washington public ports association shall be subject to audit by the Washington state division of municipal corporations of the state auditor. [1961 c 31 § 6.]

Chapter 53.08 POWERS

| Sections | |
|-----------|---|
| 53.08.010 | Acquisition of property—Levy of assessments. |
| 53.08.020 | Acquisition and operation of facilities. |
| 53.08.025 | Acquisition of commercial waterway district in class AA county. |
| 53.08.030 | Operation of foreign trade zones. |
| 53.08.040 | Improvement of lands for industrial and commercial purposes—Providing sewer and water utilities—Providing pollution control facilities. |
| 53.08.045 | Facilities constructed under authority of chapter subject to taxation of leasehold interest. |
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- 53.08.190 Federal old age and survivors' insurance for employees—Plan for extension of benefits.
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- 53.08.210 Quorum.
- 53.08.220 Regulations authorized—Adoption as part of ordinance or resolution of city or county, procedure—Enforcement—Penalty for violation.
- 53.08.230 Making motor vehicle and other police regulations applicable to district property—Filing plat with county auditor—Duty of law enforcement officers.
- 53.08.240 Joint exercise of powers and joint acquisition of property—Contracts with other governmental entities.
- 53.08.250 Participation in world fairs or expositions authorized.
- 53.08.260 Park and recreation facilities.
- 53.08.270 Park and recreation facilities—Approval of other agencies.
- 53.08.280 Police officers—Appointment authorized—Jurisdiction.

Acquisition of vacated waterways: RCW 79.01.472.

Actions by and against public corporations: RCW 4.08.110 and 4.08.120.

Airport districts: Chapter 14.08 RCW.

Emergency public works: Chapter 39.28 RCW.

Lien for labor and materials on public works: Chapter 60.28 RCW.

Permits to use waterways within a port district: RCW 79.16.190.

Public contracts: Chapters 39.04 through 39.32 RCW.

53.08.010 Acquisition of property—Levy of assessments. A port district may acquire by purchase, for cash or on deferred payments for a period not exceeding ten years, or by condemnation, or both, all lands, property, property rights, leases, or easements necessary for its purposes and may exercise the right of eminent domain in the acquirement or damaging of all such lands, property, and property rights, and may levy and collect assessments upon property for the payment of all damages and compensation in carrying out its purposes, and such right shall be exercised in the same manner and by the same procedure as provided for cities of the first class insofar as consistent with this title, and in connection therewith the county treasurer shall perform the duties of the treasurers of such cities. [1955 c 65 § 2. Prior: 1953 c 171 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by cities: Chapter 8.12 RCW.

53.08.020 Acquisition and operation of facilities. A port district may construct, condemn, purchase, acquire, add to, maintain, conduct, and operate sea walls, jetties, piers, wharves, docks, boat landings, and other harbor improvements, warehouses, storehouses, elevators, grain-bins, cold storage plants, terminal icing plants, bunkers, oil tanks, ferries, canals, locks, tidal basins, bridges, subways, tramways, cableways, conveyors, administration buildings, fishing terminals, together with modern appliances and buildings for the economical handling, packaging, storing, and transporting of freight and handling of passenger traffic, rail and motor vehicle transfer and terminal facilities, water transfer and terminal facilities, air transfer and terminal facilities, and any combination of such transfer and terminal facilities, commercial transportation, transfer, handling,

storage and terminal facilities, and improvements relating to industrial and manufacturing activities within the district, and in connection with the operation of the facilities and improvements of the district, it may perform all customary services including the handling, weighing, measuring and reconditioning of all commodities received. A port district may also construct, condemn, purchase, acquire, add to and maintain facilities for the freezing or processing of goods, agricultural products, meats or perishable commodities. A port district may also construct, purchase and operate belt line railways, but shall not acquire the same by condemnation. [1963 c 147 § 3; 1961 c 126 § 1; 1955 c 65 § 3. Prior: 1953 c 171 § 2; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Severability—1961 c 126: "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 126 § 2.]

53.08.025 Acquisition of commercial waterway district in class AA county. See chapter 91.07 RCW.

53.08.030 Operation of foreign trade zones. A district may apply to the United States for permission to establish, operate, and maintain foreign trade zones within the district: *Provided*, That when the money so raised is to be used exclusively for the purpose of acquiring land for sites and constructing warehouses, storage plants, and other facilities to be constructed within the zone for use in the operation and maintenance of the zones, the district may contract indebtedness and issue general bonds therefor in an amount, in addition to the three-fourths of one percent hereinafter fixed, of one 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 additional indebtedness only to be incurred with the assent of three-fifths of the voters of the district voting thereon. [1970 ex.s. c 42 § 31; 1955 c 65 § 4. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

53.08.040 Improvement of lands for industrial and commercial purposes—Providing sewer and water utilities—Providing pollution control facilities. A district may improve its lands by dredging, filling, bulkheading, providing waterways or otherwise developing such lands for sale or lease for industrial and commercial purposes. A district may also acquire, construct, install, improve, and operate sewer and water utilities to serve its own property and other property owners under terms, conditions, and rates to be fixed and approved by the port commission. A district may also acquire, by purchase, construction, lease, or in any other manner, and may maintain and operate other facilities for the control or elimination of air, water, or other pollution, including, but not limited to, facilities for the treatment and/or

disposal of industrial wastes, and may make such facilities available to others under terms, conditions and rates to be fixed and approved by the port commission. Such conditions and rates shall be sufficient to reimburse the port for all costs, including reasonable amortization of capital outlays caused by or incidental to providing such other pollution control facilities: *Provided*, That no part of such costs of providing any pollution control facility to others shall be paid out of any tax revenues of the port: *And provided further*, That no port shall enter into an agreement or contract to provide sewer and/or water utilities or pollution control facilities if substantially similar utilities or facilities are available from another source (or sources) which is able and willing to provide such utilities or facilities on a reasonable and nondiscriminatory basis unless such other source (or sources) consents thereto.

In the event that a port elects to make such other pollution control facilities available to others, it shall do so by lease, lease purchase agreement, or other agreement binding such user to pay for the use of said facilities for the full term of the revenue bonds issued by the port for the acquisition of said facilities, and said payments shall at least fully reimburse the port for all principal and interest paid by it on said bonds and for all operating or other costs, if any, incurred by the port in connection with said facilities: *Provided, however*, That where there is more than one user of any such facilities, each user shall be responsible for its pro rata share of such costs and payment of principal and interest. Any port intending to provide pollution control facilities to others shall first survey the port district to ascertain the potential users of such facilities and the extent of their needs. The port shall conduct a public hearing upon the proposal and shall give each potential user an opportunity to participate in the use of such facilities upon equal terms and conditions. [1972 ex.s. c 54 § 1; 1967 c 131 § 1; 1955 c 65 § 5. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Severability—1972 ex.s. c 54: "If any provision of this 1972 amendatory act or the application thereof to any person or circumstance, 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 1972 amendatory act are declared to be severable." [1972 ex.s. c 54 § 5.] This applies to RCW 43.21A.065, and 53.08.040–53.08.047.

53.08.045 Facilities constructed under authority of chapter subject to taxation of leasehold interest. Facilities constructed by a port district under authority of this chapter will be subject to taxation of leasehold interest pursuant to applicable laws as now or hereafter enacted. [1972 ex.s. c 54 § 3.]

Severability—1972 ex.s. c 54: See note following RCW 53.08.040. *Taxation of leasehold estates: Chapter 84.40A RCW.*

53.08.047 Chapter not to be construed as restricting or limiting powers of district under other laws. Neither this chapter nor anything herein contained shall be construed as a restriction or limitation upon any powers which a district might otherwise have under any laws of

this state, but shall be construed as cumulative. [1972 ex.s. c 54 § 4.]

Severability—1972 ex.s. c 54: See note following RCW 53.08.040.

53.08.050 Local improvement districts. A district may establish local improvement districts within the district, and levy special assessments, in annual installments extending over a period not exceeding ten years on all property specially benefited by the local improvement, on the basis of special benefits, to pay in whole or in part the damages or costs of the local improvement, and issue local improvement bonds to be paid from local improvement assessments. The levy and collection of such assessments and issuance of such bonds shall be as provided for the levy and collection of local improvement assessments and the issuance of local improvement bonds by cities of the first class, insofar as consistent with this title: *Provided*, That the duties of the treasurers of such cities in connection therewith shall be performed by the county treasurer. [1955 c 65 § 6. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Cities, issuance of local improvement bonds: Chapter 35.45 RCW.

Cities, levy and collection of local improvement assessments: Chapters 35.44, 35.49 RCW.

Public lands subject to local assessments: RCW 79.44.010.

53.08.060 Improvement of waters and waterways. A district may improve navigable and nonnavigable waters of the United States and the state of Washington within the district; create and improve for harbor purposes new waterways within the district; and regulate and control all such waters and all natural or artificial waterways within the district (waterways of commercial waterway districts excepted), and remove obstructions therefrom, and straighten, widen, deepen, and otherwise improve any water, watercourses, bays, lakes or streams, whether navigable or otherwise, flowing through or located within the district. [1955 c 65 § 7. Prior: 1943 c 171 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Commercial waterway districts: Chapters 91.04, 91.07 RCW.

53.08.070 Rates and charges—Government contracts. A district may fix, without right of appeal therefrom the rates of wharfage, dockage, warehousing, and port and terminal charges upon all improvements owned and operated by it, and the charges of ferries operated by it. The port commission shall file with the utilities and transportation commission its schedule of rates and charges so fixed, as required of public service corporations. It may change any rate and charge so filed by filing with the commission a notice of the proposed change not less than thirty days before the change shall go into effect.

It may fix, subject to state regulation, rates of wharfage, dockage, warehousing, and all necessary port and terminal charges upon all docks, wharves, warehouses,

quays, and piers owned by it and operated under lease from it.

Notwithstanding any provision of this section, a port district may enter into any contract for wharfage, dockage, warehousing, or port or terminal charges, with the United States or any governmental agency thereof or with the state of Washington or any political subdivision thereof under such terms as the commission may, in its discretion, negotiate. [1955 c 65 § 8. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Port commission as storage warehouseman: Chapter 81.92 RCW, RCW 81.98.030.

Utilities and transportation commission: Chapter 80.01 RCW.

53.08.080 Lease of property—Authorized—Duration. A district may lease all lands, wharves, docks and real and personal property owned and controlled by it, upon such terms as the port commission deems proper: *Provided*, That no lease shall be for a period longer than fifty years, except where the property involved is or is to be devoted to airport purposes the port commission may lease said property for such period as may equal the estimated useful life of such work or facilities, but not to exceed seventy-five years: *Provided further*, That where the property is held by the district under lease from the United States government or the state of Washington, or any agency or department thereof, the port commission may sublease said property, with option for extensions, up to the total term and extensions thereof permitted by such lease, but in any event not to exceed ninety years. [1973 c 87 § 1; 1961 ex.s. c 8 § 1; 1959 c 157 § 1; 1955 c 65 § 9. Prior: 1953 c 243 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Lease of county property for airport purposes: RCW 36.34.180.

Lease of municipal property for airport purposes: RCW 14.08.120.

Restrictions on leases of harbor areas: State Constitution Art. 15 § 2.

53.08.085 Lease of property—Security for rent. Every lease of all lands, wharves, docks and real and personal property of a port district for a term of more than one year shall have the rent secured by rental insurance, bond, or other security satisfactory to the port commission, in an amount equal to one-sixth the total rent, but in no case shall such security be less than an amount equal to one year's rent or more than an amount equal to three years' rent. Such security shall be for the term of the lease: *Provided*, That nothing in this section shall prevent the port commission from requiring additional security on leases or provisions thereof, or on other agreements to use port facilities: *Provided further*, That any security agreement may provide for termination on the anniversary date of such agreement on not less than one year's written notice to the port if said lease is not in default at the time of said notice: *Provided further*, That if the security as required herein is not maintained throughout the full term of the lease, said lease shall be considered in default. [1973 c 87 § 2.]

53.08.090 Sale of property. A port commission may, by resolution, authorize the managing official of a port district to sell and convey port district personal property of less than twenty-five hundred dollars in value. Such authority shall be in force for not more than one calendar year from the date of resolution and may be renewed from year to year. Prior to any such sale or conveyance the managing official shall itemize and list the property to be sold and make written certification to the commission that the listed property is no longer needed for district purposes. Any large block of such property having a value in excess of twenty-five hundred dollars shall not be broken down into components of less than twenty-five hundred dollars value and sold in such smaller components unless such smaller components be sold by public competitive bid. As regards property valued at more than twenty-five hundred dollars a district may sell and convey any of its property when the port commission has, by resolution, declared the property to be no longer needed for district purposes, but no property which is a part of the comprehensive plan of improvement or modification thereof shall be disposed of until the comprehensive plan has been modified to find such property surplus to port needs. The comprehensive plan shall be modified only after public notice and hearing provided by RCW 53.20.010.

Nothing in this section shall be deemed to repeal or modify procedures for property sales within industrial development districts as set forth in chapter 53.25 RCW. [1969 ex.s. c 30 § 1; 1965 c 23 § 1; 1955 c 65 § 10. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Restriction on sale of harbor rights and property: State Constitution Art. 15 § 1 (Amendment 15).

53.08.091 Sale of property—Contract sales—Terms and conditions. Except in cases where the full purchase price is paid at the time of the purchase, every sale of real property under authority of RCW 53.08.090 or RCW 53.25.110 shall be subject to the following terms and conditions:

(1) The purchaser shall enter into a contract with the district in which the purchaser shall covenant that he will make the payments of principal and interest when due, and that he will pay all taxes and assessments on such property. Upon failure to make payments of principal, interest, assessments or taxes when due all rights of the purchaser under said contract may, at the election of the district, after notice to said purchaser, be declared to be forfeited. When property is declared forfeited the district shall be released from all obligation to convey the land;

(2) The district may, as it deems advisable, extend the time for payment of principal and interest due or to become due;

(3) The district shall notify the purchaser in each instance when payment is overdue, and that the purchaser is liable to forfeiture if payment is not made within thirty days from the time the same became due, unless the time be extended by the district;

(4) Not less than one-tenth of the total purchase price shall be paid on the date of execution of the contract for sale and one-tenth shall be paid annually thereafter until the full purchase price has been paid, but any purchaser may make full payment at any time. All unpaid deferred payments shall draw interest at a rate not less than six percent per annum.

Nothing in this section shall be deemed to supersede other provisions of law more specifically governing sales of port district property. It is the purpose of this section to provide additional authority and procedures for sale of port district property no longer needed for port purposes. [1969 ex.s. c 11 § 1; 1965 c 23 § 2.]

53.08.092 Sale of property—Taxes and assessments against property sold by contract. A copy of all contract sales of port district property shall be filed with the county assessor within thirty days after the first payment is received by the port. The assessor shall place such property on the tax rolls of the county and the purchaser of such property shall become liable for all levies and assessments against such property. The port shall not be liable for any taxes or assessments, but if any outstanding taxes are not paid the property may be sold by the county as with other property with delinquent taxes due. Any amounts accruing from such a sale by the county, not required to pay outstanding and delinquent taxes or assessments and foreclosure costs, shall be paid to the port district. [1965 c 23 § 3.]

53.08.110 Gifts—Improvement. Port commissioners of any port district are hereby authorized to accept for and on behalf of said port district gifts of real and personal property and to expend in improvements and betterment such amount as may be necessary. [1921 c 39 § 4; RRS § 9705.]

53.08.120 Contracts for labor and material. All material required by a port district may be procured in the open market or by contract and all work ordered may be done by contract or day labor. All such contracts shall be let at public bidding upon notice published in a newspaper in the district at least ten days before the letting, calling for sealed bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder. [1955 c 348 § 2. Prior: 1921 c 179 § 1, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Severability—1955 c 348: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1955 c 348 § 7.] This applies to RCW 53.08.120, 53.08.130, 53.12.245, 53.12.250 and 53.36.010.

53.08.130 Notice—Award of contract. The notice shall state generally the nature of the work to be done and require that bids be sealed and filed with the commission at a time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, money order, or surety bid bond to the commission for a sum not less than five percent of the

amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. At the time and place named the bids shall be publicly opened and read and the commission shall proceed to canvass the bids and, except as otherwise in this section provided, shall let the contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his own plans and specifications. If, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all such bid proposal deposits shall be returned to the bidders; but if the contract is let, then all bid proposal deposits shall be returned to the bidders, except that of the successful bidder which shall be retained until a contract is entered into for the purchase of such materials or doing such work, and a bond given to the port district for the performance of the contract and otherwise conditioned as required by law, with sureties satisfactory to the commission, in an amount to be fixed by the commission, but not in any event less than twenty-five percent of the contract price. If said bidder fails to enter into the contract in accordance with his bid and furnish such bond within ten days from the date at which he is notified that he is the successful bidder, the check or money order and the amount thereof shall be forfeited to the port district or the port district shall recover the amount of the surety bid bond. [1971 ex.s. c 258 § 2; 1955 c 348 § 3. Prior: 1921 c 179 § 1, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Severability—1971 ex.s. c 258: See note following RCW 28B.10.350.

Contractor's bond: Chapter 39.08 RCW.

Lien on public works, retained percentage of contractor's earnings: Chapter 60.28 RCW.

53.08.140 Leases or contracts without bond. Port districts may enter into leases and contracts of every kind and nature with the United States of America or any of its departments, the state of Washington or any of its departments, or its political subdivisions or with any municipal corporation or quasi municipal corporation of the state of Washington, without requiring said port district or public bodies to provide bonds to secure the performance thereof. All such leases or contracts heretofore entered into are hereby ratified. [1943 c 136 § 1; Rem. Supp. 1943 § 9710.]

53.08.150 Notices when no newspaper in county. Notices required in port districts in which no newspaper is published may be given by publication in any newspaper of general circulation in the county. [1921 c 39 § 3; RRS § 9704.]

53.08.160 Studies, investigations, surveys—Promotion of facilities. All port districts organized under the provisions of this act shall be, and they are hereby, authorized and empowered to initiate and carry on the necessary studies, investigations and surveys required for the proper development, improvement and utilization of all port properties, utilities and facilities, and for industrial development within the district when such

agricultural and industrial development is carried out by a public agency, institution, or body for a public purpose, and to assemble and analyze the data thus obtained and to cooperate with the state of Washington, other port districts and other operators of terminal and transportation facilities for these purposes, and to make such expenditures as are necessary for said purposes, and for the proper promotion, advertising, improvement and development of such port properties, utilities and facilities: *Provided however*, That nothing in this section shall authorize a port district to develop its properties as an agricultural or dairy farm. [1973 1st ex.s. c 55 § 1; 1947 c 24 § 2; Rem. Supp. 1947 § 9692A.]

53.08.170 Employment—Wages—Benefits—Agents—Insurance for port district commissioners. The port commission shall have authority to create and fill positions, to fix wages, salaries and bonds thereof, to pay costs and assessments involved in securing or arranging to secure employees, and to establish such benefits for employees, including holiday pay, vacations or vacation pay, retirement and pension benefits, medical, surgical or hospital care, life, accident, or health disability insurance, and similar benefits, already established by other employers of similar employees, as the port commissioner shall by resolution provide: *Provided*, That any district providing insurance benefits for its employees in any manner whatsoever may provide business related travel, liability, health, errors and omissions and accident insurance, for its commissioners, which insurance shall not be considered to be compensation.

The port commission shall have authority to provide or pay such benefits directly, or to provide for such benefits by the purchase of insurance policies or entering into contracts with and compensating any person, firm, agency or organization furnishing such benefits, or by making contributions to vacation plans or funds, or health and welfare plans and funds, or pension plans or funds, or similar plans or funds, already established by other employers of similar employees and in which the port district is permitted to participate for particular classifications of its employees by the trustees or other persons responsible for the administration of such established plans or funds: *Provided further*, That no port district employee shall be allowed to apply for admission to or be accepted as a member of the state employees' retirement system after January 1, 1965 if admission to such system would result in coverage under both a private pension system and the state employees' retirement system, it being the purpose of this proviso that port districts shall not at the same time contribute for any employee to both a private pension or retirement plan and to the state employees' retirement system. The port commission shall have authority by resolution to utilize and compensate agents for the purpose of paying, in the name and by the check of such agent or agents or otherwise, wages, salaries and other benefits to employees, or particular classifications thereof, and for the purpose of withholding payroll taxes and paying over tax moneys so withheld to appropriate government agencies, on a combined basis

with the wages, salaries, benefits, or taxes of other employers or otherwise; to enter into such contracts and arrangements with and to transfer by warrant such funds from time to time to any such agent or agents so appointed as are necessary to accomplish such salary, wage, benefit, or tax payments as though the port district were a private employer, notwithstanding any other provision of the law to the contrary. The funds of a port district transferred to such an agent or agents for the payment of wages or salaries of its employees in the name or by the check of such agent or agents shall be subject to garnishment with respect to salaries or wages so paid, notwithstanding any provision of the law relating to municipal corporations to the contrary. [1973 1st ex.s. c 6 § 1; 1965 c 20 § 1; 1955 c 64 § 1.]

Garnishment: Chapter 7.32 RCW.

Payroll deductions: RCW 41.04.020.

Prevailing wages on public works: Chapter 39.12 RCW.

53.08.171 Employment relations—Collective bargaining and arbitration. See chapter 53.18 RCW.

53.08.175 Commissioners, officers and employees—Reimbursement of expenses. Employees, officers, and commissioners of port districts shall, when engaged in official business of the port district, be entitled to receive their necessary and reasonable travel and other business expenses incurred on behalf of the port district. Reimbursement of such expenses may be granted, whether incurred within or without the port district, when submitted on a voucher with appropriate evidence of payment by such employee or official. [1965 c 101 § 1.]

Section headings: "Section headings as used in this act do not constitute any part of the law." [1965 c 101 § 3.] This applies to RCW 53.08.175 and 53.08.176.

53.08.176 Commissioners, officers and employees—Regulation of expenses. Each port district shall adopt a resolution (which may be amended from time to time) which shall establish the basic rules and regulations governing methods and amount of reimbursement payable to such port officials and employees for travel and other business expenses incurred on behalf of the district. The resolution shall, among other things, establish procedures for approving such expenses; set forth the method of authorizing the direct purchase of transportation; the form of the voucher; and requirements governing the use of credit cards issued in the name of the port district. Such regulations may provide for payment of per diem in lieu of actual expenses when travel requires overnight lodging: *Provided*, That in all cases any per diem payment shall not exceed twenty-five dollars per day. The state auditor shall, as provided by general law, cooperate with the port district in establishing adequate procedures for regulating and auditing the reimbursement of all such expenses. [1965 c 101 § 2.]

53.08.180 Federal old age and survivors' insurance for employees. As used in RCW 53.08.180 through 53.08.200, the term "employees" shall be as defined in

RCW 41.48.020 and no distinction shall be made for the purposes of coverage under the social security act, between persons employed by a port district on a casual or temporary basis, or on a regular or steady basis, or between persons paid hourly wages and persons paid wages on a weekly, monthly, or other periodic basis. It being the intent of RCW 53.08.180 through 53.08.200 that all employees shall be entitled to the coverage of the federal social security act for work performed in the service of a port district, which is not covered by the state employees' retirement system. [1955 c 219 § 1.]

State employees' retirement system: Chapter 41.40 RCW.

53.08.190 Federal old age and survivors' insurance for employees—Plan for extension of benefits. Each port district, which has not previously done so, shall within thirty days of the effective date of RCW 53.08.180 through 53.08.200, submit for approval by the governor a plan for extending the benefits of Title II of the federal social security act, as amended, in conformity with applicable provisions of said act as set forth in chapter 41.48 RCW, to employees of such port district who are employed in positions not covered by the employees' retirement system of the state of Washington. The plan required to be submitted by this section shall be as set forth in RCW 41.48.050 and shall be in conformance therewith. [1955 c 219 § 2.]

Reviser's note: Effective date of RCW 53.08.180 through 53.08.200 is midnight, June 8, 1955; see preface 1955 session laws.

53.08.200 Federal old age and survivors' insurance for employees—Contributions. All port districts are authorized to make contributions on employees' wages, and to impose upon their employees contributions with respect to their wages in accordance with RCW 41.48.030 through 41.48.050. [1955 c 219 § 3.]

53.08.205 Liability insurance for officials and employees. The board of commissioners of each port district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 4.]

53.08.210 Quorum. See RCW 53.12.246.

53.08.220 Regulations authorized—Adoption as part of ordinance or resolution of city or county, procedure—Enforcement—Penalty for violation. A port district may formulate all needful regulations for the use by tenants, agents, servants, licensees, invitees, suppliers, passengers, customers, shippers, business visitors and members of the general public of any properties or facilities owned or operated by it, and request the adoption, amendment or repeal of such regulations as part of the ordinances of the city or town in which such properties or facilities are situated, or as part of the resolutions of the county, if such properties or facilities be situated outside any city or town. The port commission

shall make such request by resolution after holding a public hearing on the proposed regulations, of which at least ten days' notice shall be published in a legal newspaper of general circulation in the port district. Such regulations must conform to and be consistent with federal and state law. As to properties or facilities situated within a city or town, such regulations must conform to and be consistent with the ordinances of the city or town. As to properties or facilities situated outside any city or town, such regulations must conform to and be consistent with county resolutions. Upon receiving such request, the governing body of the city, town or county, as the case may be, may adopt such regulations as part of its ordinances or resolutions, or amend or repeal such regulations in accordance with the terms of the request. Any violation of such regulations shall constitute a misdemeanor which shall be redressed in the same manner as other police regulations of the city, town or county, and it shall be the duty of all law enforcement officers to enforce such regulations accordingly. [1961 c 38 § 1.]

53.08.230 Making motor vehicle and other police regulations applicable to district property—Filing plat with county auditor—Duty of law enforcement officers. A port district may at its option file with the county auditor a plat of any of its properties or facilities, showing thereon such private streets, alleys, access roads, parking areas, parks and other places as the port district may wish to have treated as public for purposes of motor vehicle or other police regulations. Such plat may be amended at any time by the filing of an amendatory plat, and may be vacated at any time by the filing of a resolution of vacation. So long as any such plat or amendatory plat is on file and not vacated, the motor vehicle or other police regulations of the state, and the motor vehicle regulations of the city, town or county, as the case may be, in which the areas described in the plat are situated, shall apply to such areas as though they were public streets, alleys, access roads, parking areas, parks or other places, and it shall be the duty of all state and local law enforcement officers to enforce such regulations accordingly. [1961 c 38 § 2.]

53.08.240 Joint exercise of powers and joint acquisition of property—Contracts with other governmental entities. Any two or more port districts shall have the power, by mutual agreement, to exercise jointly all powers granted to each individual district, and in the exercise of such powers shall have the right and power to acquire jointly all lands, property, property rights, leases, or easements necessary for their purposes, either entirely within or partly within or partly without or entirely without such districts: *Provided*, That any two or more districts so acting jointly, by mutual agreement, shall not acquire any real property or real property rights in any other port district without the consent of such district.

A district may enter into any contract with the United States, or any state, county, or municipal corporation, or any department of those entities, for carrying

out any of the powers that each of the contracting parties may by law exercise separately. [1961 c 24 § 1.]

53.08.250 Participation in world fairs or expositions authorized. See chapter 35.60 RCW.

53.08.260 Park and recreation facilities. A port district may construct, improve, maintain, and operate public park and recreation facilities when such facilities are necessary to more fully utilize boat landings, harbors, wharves and piers, air, land, and water passenger and transfer terminals, waterways, and other port facilities authorized by law pursuant to the port's comprehensive plan of harbor improvements and industrial development. [1965 c 81 § 1.]

53.08.270 Park and recreation facilities—Approval of other agencies. Before undertaking any such plan for the acquisition and operation of any park or recreational facility the proposed plan therefor shall be first submitted in writing to the director of the parks and recreation commission and to the governing body of any county or municipal park agency having jurisdiction in the area. The state director and/or such county or municipal park agency shall examine the port's proposed plan, and may disapprove such proposed plan if it is found to be in conflict with state or local park and recreation plans for the same area. If such proposed port plan is disapproved the port district shall not proceed further with such plan. If the state director or the governing body of the county or municipal agency does not respond in writing to the port within sixty days, it shall be deemed that approval has been granted. [1965 c 81 § 2.]

53.08.280 Police officers—Appointment authorized—Jurisdiction. Any port district operating an airport with a police department as authorized by RCW 14.08.120 is authorized to appoint police officers with full police powers to enforce all applicable federal, state, or municipal statutes, rules, regulations, or ordinances upon any port-owned or operated properties or operations: *Provided*, That such police officers must have successfully graduated from a recognized professional police academy or training institution. [1974 1st ex.s. c 62 § 1.]

Chapter 53.12 COMMISSIONERS—ELECTIONS

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Elections: Title 29 RCW.

53.12.010 Port commission—Number of commissioners. The powers of the port district shall be exercised through a port commission consisting of three members. In port districts located in a class AA county the members shall be residents of the county in which the port district is located. In all other port districts, three commissioner districts, numbered consecutively, having approximately equal population and boundaries following ward and precinct lines, shall be described in the petition for the formation of the port district, and one commissioner shall be elected from each of said commissioner districts.

In port districts having additional commissioners as authorized by RCW 53.12.120 and 53.12.130, the powers of the port district shall be exercised through a port commission consisting of five members constituted as provided therein. [1965 c 51 § 1; 1959 c 17 § 3. Prior: 1913 c 62 § 2; 1911 c 92 § 3; RRS § 9690.]

53.12.020 Qualifications. In port districts located in a class AA county no person shall be eligible to hold the office of port commissioner unless he is a qualified voter of the district. In all other port districts except those located in a class AA county the person must be a qualified voter of the commissioner district from which he is elected. [1965 c 51 § 2; 1959 c 175 § 1; 1959 c 17 § 4. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.035 Declarations of candidacy in class AA and A counties—Place, time and manner of filing. All candidates for district offices in port districts of class AA and class A counties shall file their declarations of candidacy with the county auditor of the county as set forth in RCW 29.21.060, as now or hereafter amended and in the same manner as candidates for county offices. In port districts located in a class AA county the declaration may be for any numbered port commissioner position to be open in the next port district election. In port districts with five commissioners in existence on July 1, 1965, the respective numbered positions shall correspond to the numbers of the county commissioner districts from which the three original commissioners in the port districts were elected, with

the central district being numbered one, and with positions four and five being assigned to the original at large commissioner positions for which the first incumbents received, respectively, the greater and lesser number of votes cast.

In all port districts in a class AA county, with three port commissioners there shall be three positions denominated positions one, two and three, and declarations of candidacy shall be for a specific position. Where a proposition for an increased number of port commissioners is on the ballot under RCW 53.12.120 and RCW 53.12.130, the two additional positions shall be denominated positions four and five, and candidates for the positions thus proposed to be created shall file declarations of candidacy for a specific position. [1965 c 51 § 3; 1959 c 175 § 9.]

53.12.040 Declarations of candidacy, except districts in class AA county—Place of filing. In port districts, other than port districts located in a class AA county, port commissioners shall file declarations of candidacy with the county auditor in which the port district is located for the commissioner district in which the candidate is a resident. [1965 c 51 § 4; 1959 c 175 § 2; 1959 c 17 § 7. Prior: 1951 c 69 § 2; 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part. Cf. 1923 c 53 § 5; RRS § 5148-1.]

53.12.044 Declarations of candidacy, except districts in class AA and class A counties—Time of filing. In all port districts, except port districts in class AA and class A counties, declarations of candidacy shall be filed with the county auditor not more than sixty nor less than forty-six days prior to the date of the election; declarations of candidacy for an election for the formation of a port district shall be filed with the county auditor not more than sixty nor less than twenty days prior to such election. [1963 c 200 § 21; 1959 c 175 § 4; 1951 c 69 § 3.]

53.12.050 Election of commissioners. At the same election at which the proposition is submitted to the voters as to whether a port district shall be formed, three commissioners shall be elected to hold office as provided by law. All candidates shall be voted upon by the entire port district. [1959 c 17 § 5. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.055 Primaries in class AA and A counties. In the event that more than two candidates are filed after the last day for withdrawal of candidacy, in port districts in class AA and class A counties, the county auditor shall conduct a port district primary at the time provided by general law for such primaries.

In the event that after the last day for withdrawal of candidacy no more than two candidates are filed for the office of port district commissioner in any port commissioner district of a port district located in a class A county or for any numbered position for port district commissioner in any port district in a class AA county, the county auditor shall not conduct a primary and

shall notify the candidates that there will be no primary. [1965 c 51 § 5; 1959 c 175 § 10.]

53.12.057 Ballots—Rotating names of candidates. The names of candidates for each position for port commissioner shall be rotated in the manner provided in RCW 29.30.040. [1965 c 51 § 6.]

53.12.060 Elections. A general election shall be held in conjunction with county elections for the election of a port commissioner or commissioners and for the submission of propositions, and special elections shall be held at such times and for such propositions as the port commission may by resolution prescribe, subject to the limitations and pursuant to the requirements of this act.

There shall be not less than one polling place in each of the various wards of any incorporated city within such port district, and one polling place within each precinct of each port district not within the limits of any incorporated city: *Provided*, That the commissioners of any port district having a population of less than two hundred and fifty registered voters, may, by resolution, provide that all elections of said district be held at one central polling place to be designated by them. It shall be the duty of the county commissioners in the formation of a port district, and of the port commission in all subsequent elections, to, at least twenty days before each election, designate the polling places and appoint three election officers for each place of voting. At all elections the vote shall be by ballot. The polls shall be open between such hours of the day as the commission shall designate, but in every case the polls shall be open between one o'clock p.m. and eight o'clock p.m. All electors who are, at the time of such election, duly qualified to vote within their respective precincts under the general election laws for state and county officers shall be entitled to vote at any election held in such port district.

Officers of the city and county having charge of the registration books of any city or precinct in a port district shall deliver the same for the use of the election officers at all port elections. In the event of such registration books being required by law to be used by any school district or other public corporation at the same time as the use thereof will be necessary by the port district, such books shall be delivered to the port commission and school district or other public corporation jointly, and the same polling places and registration books may be used jointly in such cases, and the same individuals may serve as election officers for all such joint elections, and in such cases the compensation of such election officers and other expense shall be so divided that the port district shall bear only its proportionate share thereof.

The manner of conducting and voting at elections under this act, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as provided by the general election laws governing the election of state and county officers, except as otherwise provided in this act. [1959 c 175 § 6; 1927 c 204 § 1; 1913 c 62 § 3; RRS § 9691. Formerly RCW 53.12.060, part, and 53.12.070

through 53.12.110. FORMER PART OF SECTION: 1913 c 62 § 2, part, now codified in RCW 53.12.010.]

Elections: Title 29 RCW.

53.12.120 Increasing number of commissioners to five—Proposition—Numbered positions. In port districts having a population of five hundred thousand or more, in accordance with the latest United States census, there shall be submitted to the voters of the district, at the first general election after June 11, 1953, the proposition of increasing the number of commissioners to five. At any general election thereafter, the same proposition may be submitted by resolution of the port commissioners, by filing a certified copy of the resolution with the county auditor at least four months prior to the general election. If the proposition is adopted, the commission in that port district shall consist of five commissioners in positions numbered as specified in RCW 53.12.035, the additional commissioners to take office five days after the election. [1965 c 51 § 7; 1959 c 175 § 3; 1959 c 17 § 10. Prior: 1953 c 198 § 1; 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.130 Increasing number of commissioners to five—Election of additional commissioners—Commencement and term of office. At the same general election the names of the candidates for the additional port commissioner positions numbered four and five shall be printed on the ballot and voted on, but the election of such additional commissioners shall be contingent upon the adoption of the proposition for a commission of five members. The candidate for each additional numbered position receiving the highest number of votes shall be elected, and shall take office five days after the election. The additional commissioner thus elected receiving the highest number of votes shall hold office for six years and the other shall hold office for four years from the date provided by law for port commissioners to next commence their terms of office.

A successor to a commissioner holding position four or five whose term is about to expire, shall be elected at the general election next preceding such expiration, for a term of six years. [1965 c 51 § 8; 1959 c 17 § 11. Prior: 1953 c 198 § 2; 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.140 Vacancy, how caused. A vacancy in the office of port commissioner shall occur by death, resignation, removal, conviction of a felony, nonattendance at meetings of the port commission for a period of sixty days unless excused by the port commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty. [1959 c 17 § 9. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.150 Vacancies, how filled. In the event of a vacancy in the office of port commissioner by death, resignation or otherwise, such vacancy shall be filled at the next general election, the vacancy in the interim to be filled by appointment by a majority vote of the remaining port commissioners.

If there should be at the same time such number of vacancies that there are not in office a majority of the full number of commissioners fixed by law, county commissioners of the county shall within fifteen days of such vacancies make appointments to fill the vacancies ad interim through the next general election. [1959 c 175 § 8; 1959 c 17 § 8. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690, part.]

53.12.160 Elections in districts less than entire county. In port districts comprising less than the entire county, except port districts in class AA and class A counties, elections for the selection of commissioners shall be held at the same time as the county general election is held: *Provided*, That if the petition for the organization of the district so requests, the first election of commissioners may be held at a special election which shall be called and held in the manner provided for special organization elections of port districts. [1963 c 200 § 19; 1951 c 68 § 1; 1941 c 17 § 1; 1935 c 133 § 1; Rem. Supp. 1941 § 9691A-1.]

Construction—1935 c 133: "This act shall not be construed as repealing, amending or modifying any law now in effect, except as to the time of election and the tenure of office of port commissioners in port districts comprising less than the entire county, and the manner of holding elections and canvassing returns of such port districts." [1935 c 133 § 11.] This applies to RCW 53.12.160 and 53.12.180 through 53.12.200.

53.12.172 Terms in districts less than entire county. In every such port district the term of office of each port commissioner shall be six years and until his successor is elected and qualified, and one commissioner shall be elected at the time of the general election in each even-numbered year for the term of six years from the first of January following his election: *Provided*, That in any district hereafter organized the candidate residing in the first commissioner district receiving the highest number of votes in the port district at the election organizing the district shall hold office until the expiration of six years after the first day of January following his election if such election is at a general election, and if such election is at a special election he shall hold office until the expiration of six years after the first day of January following the next succeeding general election; the candidate residing in the second commissioner district receiving the highest number of votes in the port district at such election shall hold office until the expiration of four years from the first day of January following his election if such election is at a general election, and if such election is at a special election he shall hold office until the expiration of four years after the first day of January following the next succeeding general election; and the candidate residing in the third commissioner district receiving the highest number of votes in the port district at such election shall hold office until the expiration of two years after the first day of January following his election if such election is at a general election, and if such election is at a special election he shall hold office until the expiration of two years after the first day of January following the next succeeding general election; in all the foregoing situations, the commissioner to hold office

until his successor is elected and qualified. [1951 c 68 § 2. Prior: (i) 1935 c 133 § 2; RRS § 9691A-2. (ii) 1935 c 133 § 3; RRS § 9691A-3. (iii) 1935 c 133 § 4; RRS § 9691A-4. (iv) 1935 c 133 § 5; RRS § 9691A-5. (v) 1935 c 133 § 6; RRS § 9691A-6. (vi) 1935 c 133 § 7; RRS 9691A-7.]

53.12.180 Conduct of elections in districts less than entire county. Notice of such election shall be given in the same manner and for the same time and by the same officials as is provided by law for the general biennial election in such counties, and in the matter of polling places, election boards, manner of conducting and voting, time for opening and closing the polls, keeping poll lists, canvassing the votes, declaring the result of the election, certifying the returns and in all other particulars as nearly as may be such election shall be called, held and conducted as is provided by law and as a part of the general biennial election in such counties; except that separate ballots shall be used for the port district and returns shall be made on the respective candidates and on each proposition or propositions which may be submitted, but all such returns shall be made by the regular election board and canvassed by the board or body that canvass the general county and state election. [1935 c 133 § 8; RRS § 9691A-8.]

Elections: Title 29 RCW.

53.12.190 Cost of election notice and ballots. The cost of printing and publishing the notices of such port election and the printing of the ballots shall be paid by the port district for which they are prepared. [1935 c 133 § 10; RRS § 9691A-10.]

Printing must be done in state: RCW 43.78.130.

53.12.200 Separate ballots and returns for each district. In case of two or more port districts comprising part of the same voting precinct the election officers shall be furnished ballots for each of said separate port districts, and each voter will be given the port district ballot for the port district in which he or she may reside, and said election officers shall in making their returns make a separate return covering each port district, although such separate returns may be in the same book as the returns for the general county and state election, but shall be separately stated. [1935 c 133 § 9; RRS § 9691A-9.]

53.12.210 Elections in districts covering entire county. In every port district the boundaries of which are coextensive with the county in which it is located, except port districts in class AA and class A counties, all elections for port commissioners shall be held at the same time as the county general biennial election is held: *Provided*, That if the petition for organization of such port districts so requests, the first election of commissioners may be held at a special election, which shall be called and held in the manner provided by law for special organization elections for such port districts. [1963 c 200 § 20; 1941 c 45 § 1; 1925 ex.s. c 113 § 1; Rem. Supp. 1941 § 9691-1.]

Time for holding elections: Chapter 29.13 RCW.

53.12.220 Terms—Districts covering entire county—Districts in class A and first class counties. In every such port district the term of office of each port commissioner shall be six years and until his successor is elected and qualified, and one port commissioner shall be elected at the time of the general biennial election in each even-numbered year for the term of six years from the first day of January following his election: *Provided*, That in any such district hereafter organized the candidate residing in the first commissioner's district receiving the highest number of votes in the port district at the election organizing the district shall hold office until the expiration of six years after the first day of January following his election if such election is at a general biennial election, and if such election is at a special election he shall hold office until the expiration of six years after the first day of January, following the next succeeding general biennial election; the candidate residing in the second commissioner district receiving the highest number of votes in the port district at such election shall hold office until the expiration of four years from the first day of January following his election if such election is at a general biennial election, and if such election is at a special election he shall hold office until the expiration of four years after the first day of January following the next succeeding general biennial election; and the candidate residing in the third commissioner district receiving the highest number of votes in the port district at such election shall hold office until the expiration of two years after the first day of January following his election if such election is at a general biennial election, and if such election is at a special election he shall hold office until the expiration of two years after the first day of January following the next succeeding general biennial election. In all port districts in first class counties, the boundaries of which are coextensive with the counties in which they are located, there shall be a port commissioner elected at the general biennial election held in 1942 from commissioner's district No. 2 and at the general biennial election in 1944 a commissioner from commissioner's district No. 1, and at the general biennial election in 1946 a commissioner from commissioner's district No. 3. Port commissioners holding office at the time this act takes effect shall continue in office until their successors are elected and qualified. In all port districts in class A counties, the boundaries of which are coextensive with the counties in which they are located, there shall be a port commissioner elected at the general biennial election held in 1942 from commissioner's district No. 1 and at the general biennial election in 1944 a commissioner from commissioner's district No. 3, and at the general biennial election in 1946 a commissioner from commissioner's district No. 2. Port commissioners holding office at the time this act takes effect shall continue in office until their successors are elected and qualified. [1941 c 45 § 2; 1925 ex.s. c 113 § 2; Rem. Supp. 1941 § 9691-2. Formerly RCW 53.12.220 and 53.12.230.]

Reviser's note: "this act" first appears in 1941 c 45 codified herein as RCW 53.12.210 and 53.12.220.

The effective date of 1941 c 45 is midnight, June 11, 1941, see preface 1941 session laws.

Validating—1929 c 219: "Each port district election which was called by the election board for any class 'A' county or county of the first class, and which was held at the time of the last general election in November, 1928, and at which a proposition for the issuance of bonds of such district was approved by three-fifths of the voters therein voting on such proposition, is hereby validated, notwithstanding any irregularity or omission in the calling or holding of such election." [1929 c 219 § 1.]

53.12.240 Conduct of elections in districts in class A and first class counties. Notices of such election shall be given in the same manner, for the same time and by the same officials as is provided by law for the general biennial election in such counties; and in the matter of polling places, election board, manner of conducting and voting, time for opening and closing polls, keeping of poll lists, canvassing the votes, declaring the result, certifying the returns and in all other particulars, as nearly as may be, such election shall be called, held and conducted as is provided by law for, and as a part of, the general biennial election in such counties. [1925 ex.s. c 113 § 3; RRS § 9691-3.]

Elections: Title 29 RCW.

53.12.245 Organization of commission—Powers and duties—Record of proceedings. The port commission shall organize by the election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the port commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records. [1955 c 348 § 6.]

Severability—1955 c 348: See note following RCW 53.08.120.
Public records: Title 40 RCW.

53.12.246 Quorum. A majority of the persons holding the office of port commissioner at any time shall constitute a quorum of the port commission for the transaction of business, and the concurrence of a majority of the persons holding such office at the time shall be necessary and shall be sufficient for the passage of any resolution, but no business shall be transacted unless there are in office at least a majority of the full number of commissioners fixed by law. [1959 c 17 § 12. Prior: 1913 c 62 § 2, part; 1911 c 92 § 3, part; RRS § 9690.]

53.12.250 Compensation. The compensation of port district commissioners shall be as follows:

(1) Commissioners of a port district having a population, according to the latest United States census, of less than one hundred thousand persons but at least one thousand persons may, by resolution, after a public hearing, notice of which shall be published no less than four times during a period of not less than ten nor more than twenty days next preceding the hearing in the newspaper of largest general circulation in the district, provide that each commissioner be reimbursed for actual attendance at meetings of the port district at a rate

not to exceed twenty-five dollars per diem: *Provided*, That the commissioners shall not receive per diem for meetings in excess of four each month: *Provided further*, That the question of per diem for the commissioners must be submitted for approval to the electors, at the next succeeding general election. The proposition shall be clearly stated on the ballot and in such a manner as to permit a vote for or against it. If a majority of the votes cast on the proposition favor it, thereafter the commissioners shall receive such per diem. At any general election thereafter the commissioners may resubmit the proposition.

(2) Commissioners of a port district having a population, according to the latest United States census, of less than three hundred and fifty thousand persons but at least one hundred thousand persons may, by resolution, after a public hearing, notice of which shall be published no less than four times during a period of not less than ten nor more than twenty days next preceding the hearing in the newspaper of largest general circulation in the district, provide that each commissioner receive a salary not to exceed three thousand and six hundred dollars per year: *Provided*, That the question of salaries for the commissioners must be submitted for approval to the electors at the next succeeding general election. The proposition shall be clearly stated on the ballot and in such a manner as to permit a vote for or against it. If a majority of the votes cast on the proposition favor it, thereafter the commissioners shall receive such salary. At any general election thereafter the commissioners may resubmit the proposition.

(3) The commissioners of a port district having a population, according to the latest United States census, of three hundred and fifty thousand persons or more may, by resolution, after a public hearing, notice of which shall be published no less than four times during a period of not less than ten nor more than twenty days next preceding the hearing in the newspaper of largest general circulation in the district, provide that each commissioner receive a salary not to exceed five thousand dollars per year: *Provided*, That the question of salaries for commissioners must be submitted for approval to the electors at the next succeeding general election. The proposition shall be clearly stated on the ballot and in such a manner as to permit a vote for or against it. If a majority of the votes cast on the proposition favor it, thereafter the commissioners shall receive such salary. At any general election thereafter the commissioners may resubmit the proposition.

Any resolution adopted under the provisions of this section relating to per diem or salaries of commissioners shall not increase or diminish the compensation of any commissioner for the remainder of his term of office. [1957 c 72 § 1; 1955 c 348 § 4. Prior: 1921 c 179 § 1, part; 1917 c 125 § 2, part; 1913 c 62 § 5, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Chapter 53.16

REVISION OF COMMISSIONER DISTRICTS

Sections

53.16.010 Revision authorized.

- 53.16.020 Notice of hearing on revision.
53.16.030 Change not to affect term of office.

53.16.010 Revision authorized. At whatever time as they in their judgment deem appropriate, except between thirty days prior to the closing of filings of candidacy for port commissioner until the next ensuing election thereof, the port commissioners may, and upon petition signed by not less than two hundred and fifty electors residing in the district shall, reestablish the boundaries of the commissioner districts in the port district, so that each commissioner district shall comprise as nearly as possible one-third of the population of the port district: *Provided*, That no voting precinct shall be divided by the boundary lines of a commissioner district. [1969 ex.s. c 9 § 1; 1957 c 69 § 2. Prior: (i) 1933 c 145 § 1; RRS § 9708-1. (ii) 1933 c 145 § 2; RRS § 9708-2.]

53.16.020 Notice of hearing on revision. The revision of boundary lines provided for in this chapter shall be made only at a meeting of the board of port commissioners with attendance of all of the members of the commission, which meeting shall be public, following notice of said meeting, and the purpose thereof published in a newspaper of general circulation within the port district, or, if there be no such newspaper published within the district, in a newspaper published at the county seat of the county in which such port district is located. Such notice shall be published not less than twice, the date of the first publication to be not less than fifteen nor more than twenty days prior to the date fixed for said hearing, and shall state the time, place and purpose of the hearing. [1933 c 145 § 3; RRS § 9708-3.]

53.16.030 Change not to affect term of office. Any change of boundary lines provided for in this chapter shall not affect the term for which a commissioner shall hold office at the time the change is made, and the requirement of two years' residence within the commissioner district for eligibility for office of port commissioner shall not apply to incumbent commissioners seeking election at any port district election held within three years of the change of such district boundaries: *Provided*, That at the time of nomination the incumbent commissioner resides in the commissioner district for which he seeks election. [1933 c 145 § 4; RRS § 9704-8.]

Chapter 53.18 EMPLOYMENT RELATIONS—COLLECTIVE BARGAINING AND ARBITRATION

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| Sections | |
| 53.18.010 | Definitions. |
| 53.18.020 | Agreements authorized. |
| 53.18.030 | Criteria for choice of employee organization—Procedures for resolution of controversy. |
| 53.18.040 | Incidental powers of district. |
| 53.18.050 | Agreements—Authorized provisions. |
| 53.18.060 | Restraints on agreement. |

53.18.010 Definitions. "Port district" shall mean a municipal corporation of the state of Washington created pursuant to Title 53 RCW. Said port districts may also be hereinafter referred to as the "employer."

"Employee" shall include all port employees except managerial, professional, and administrative personnel, and their confidential assistants.

"Employee organization" means any lawful association, labor organization, union, federation, council, or brotherhood, having as its primary purpose the representation of employees on matters of employment relations.

"Employment relations" includes, but is not limited to, matters concerning wages, salaries, hours, vacation, sick leave, holiday pay and grievance procedures. [1967 c 101 § 1.]

53.18.020 Agreements authorized. Port districts may enter into labor agreements or contracts with employee organizations on matters of employment relations: *Provided*, That nothing in this chapter shall be construed to authorize any employee, or employee organization to cause or engage in a strike or stoppage of work or slowdown or similar activity against any port district. [1967 c 101 § 2.]

53.18.030 Criteria for choice of employee organization—Procedures for resolution of controversy. In determining which employee organization will represent them, employees shall have maximum freedom in exercising their right of self-organization.

Controversies as to the choice of employee organization within a port shall be submitted to arbitration in accordance with RCW 49.08.010. Employee organizations may agree with the port district to independently resolve jurisdictional disputes: *Provided*, That when no other procedure is available the procedures of RCW 49.08.010 shall be followed in resolving such disputes. In such case the director of labor and industries shall, at the request of any employee organization, arbitrate any dispute between employee organizations and enter a binding award in such dispute. [1967 c 101 § 3.]

53.18.040 Incidental powers of district. Port districts exercising the authority granted by RCW 53.18.020 may take any of the following actions as incidental thereto: Make necessary expenditures; act jointly with other ports or employers; engage technical assistance; make appearances before and utilize the services of state or federal agencies, boards, courts, or commissions; make retroactive payments of wages where provided by agreements; and exercise all other necessary powers to carry this chapter into effect, including the promulgation of rules and regulations to effectuate the purposes of this chapter. [1967 c 101 § 4.]

53.18.050 Agreements—Authorized provisions. A labor agreement signed by a port district may contain:

(1) Provisions that the employee organization chosen by a majority of the employees in a grouping or unit will be recognized as the representative of all employees in the classification included in such grouping or unit;

(2) Maintenance of membership provisions including dues check-off arrangements; and

(3) Provisions providing for binding arbitration, the expenses being equally borne by the parties, in matters of contract interpretation and the settlement of jurisdictional disputes. [1967 c 101 § 5.]

53.18.060 Restraints on agreement. No labor agreement or contract entered into by a port district shall:

(1) Restrict the right of the port district in its discretion to hire;

(2) Limit the right of the port to secure its regular or steady employees from the local community; and

(3) Include within the same agreements: (a) Port security personnel, or (b) port supervisory personnel. [1967 c 101 § 6.]

Chapter 53.20 HARBOR IMPROVEMENTS

Sections

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| 53.20.010 | Adoption of harbor improvement plan. |
| 53.20.020 | Improvement to follow plans adopted. |
| 53.20.030 | Improvements—Ownership of. |
| 53.20.040 | Fifty percent of cost of local improvement may be paid from general fund. |
| 53.20.050 | Local improvements upon majority petition. |

Joint improvement of navigable rivers: RCW 88.32.240 and 88.32.250.

53.20.010 Adoption of harbor improvement plan. It shall be the duty of the port commission of any port district, before creating any improvements hereunder, to adopt a comprehensive scheme of harbor improvement in such port district, after a public hearing thereon, of which at least ten days' notice shall be published in a daily newspaper of general circulation in such port district, and no expenditure for the carrying on of any harbor improvements shall be made by said port commission other than the necessary salaries, including engineers, clerical and office expense of such port district, and the cost of engineering, surveying, preparation and collection of data necessary for the making and adoption of a general scheme of harbor improvements in such port district, unless and until such comprehensive scheme of harbor improvement has been so officially adopted by the port commission. [1943 c 166 § 3; 1913 c 62 § 6; 1911 c 92 § 6; Rem. Supp. 1943 § 9694.]

53.20.020 Improvement to follow plans adopted. When such general plans shall have been adopted or approved, as aforesaid, every improvement to be made by said commission shall be made substantially in accordance therewith unless and until such general plans shall have been officially changed by the port commission after a public hearing thereon, of which at least ten days' notice shall be published in a newspaper in general circulation in such port district. [1947 c 24 § 1; 1913 c 62 § 7; 1911 c 92 § 7; Rem. Supp. 1947 § 9695.]

53.20.030 Improvements—Ownership of. No improvements shall be acquired or constructed, by the port district, unless such improvements shall, when completed, be the property of such port district, the

county in which such port district is located, any commercial waterway district created within its boundaries, any city within such port district, the state of Washington or the United States of America, and the funds of such port district may be expended in the acquirement or construction of any harbor improvement embraced in such general plan adopted as in this act provided in conjunction with the county in which such port district is located, any commercial waterway district created within its boundaries, any city in such port district, the state of Washington or the United States of America, or all or any of them. [1913 c 62 § 8; 1911 c 92 § 8; RRS § 9696.]

53.20.040 Fifty percent of cost of local improvement may be paid from general fund. Whenever any improvement shall be ordered, payment for which shall be made in part from assessments against property specially benefited, not more than fifty percent of the cost thereof shall ever be borne by the entire port district, nor shall any sum be contributed by it to any improvement acquired or constructed with or by any other body, exceed [exceeding] such amount, unless a majority vote of the electors of the port district shall consent to or ratify the making of such expenditure. [1911 c 92 § 11; RRS § 9698.]

53.20.050 Local improvements upon majority petition. Whenever a petition signed by one hundred freeholders in the district to be therein described, shall be filed with the port commission, asking that any portion of the general plan adopted be ordered, and defining the boundaries of a local improvement district to be assessed in whole or in part to pay the cost thereof, it shall be the duty of the port commission to fix a date for hearing on such petition, after which it may alter the boundaries of such proposed district and prepare and adopt detail plans of any such local improvement, declare the estimated cost thereof, what proportion of such cost shall be borne by such proposed local improvement district, and what proportion of the cost, if any, but in any event not to exceed fifty percent, shall be borne by the entire port district. At any time within two years thereafter, upon petition of the owners of a majority of the lands in such proposed local improvement district, fixed by the port commission, as shown in the office of the auditor of such county, asking that such improvement be ordered, the port commission shall forthwith by resolution order such improvement, provide the general funds of the port district to be applied thereto, acquire all lands necessary therefor, pay all damages caused thereby, and commence in the name of the port district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards as may be necessary to entitle said port district to proceed with such work, and shall thereafter proceed with such work, and shall make and file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property situated within such local improvement district in proportion to the special benefits to be derived by the property in such

local improvement district from such improvement. Before the approval of such roll a notice shall be published ten days in one or more daily newspapers of general circulation in such local improvement district, stating that such roll is on file and open to inspection in the office of the clerk of the port commission, and fixing a time not less than fifteen nor more than thirty days from the date of the first publication of such notice within which protests must be filed with the clerk of said port commission against any assessments shown thereon, and fixing a time when a hearing shall be held by said commission on said protests. After such hearing the port commission may alter any and all assessments shown on such roll and may then by resolution approve the same, but in the event of any assessment being raised a new notice similar to such first notice shall be given, after which final approval of such roll may be made by the port commission. Any person feeling aggrieved by any such assessments shall perfect an appeal to the superior court of such county within ten days after such approval in the manner now provided by law for appeals from assessments levied by cities of the first class in this state. Engineering and office expenses in all cases shall be borne by the general district. [1911 c 92 § 10; RRS § 9697. Formerly RCW 53.20.050 through 53.20.080.]

Appeal from assessments: RCW 35.44.200 through 35.44.270.

Special assessments for local improvement: State Constitution Art. 7 § 9.

Chapter 53.25 INDUSTRIAL DEVELOPMENT DISTRICTS— MARGINAL LANDS

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| 53.25.010 | Marginal lands—Declaration of policies and purposes. |
| 53.25.020 | Marginal lands—Further declaration. |
| 53.25.030 | "Marginal lands" defined. |
| 53.25.040 | Industrial development districts authorized. |
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| 53.25.900 | Repeal and saving. |
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53.25.010 Marginal lands—Declaration of policies and purposes. It is hereby declared to be the public policy of the legislature of the state of Washington, that it is in the public interest to employ the power of eminent

domain and advance and expend public moneys for the purposes herein contained, and to provide for means by which marginal area properties may be developed or redeveloped in accordance with the legislative policies hereinafter stated:

(1) A sound development of the economic security of the peoples of the state of Washington is dependent upon proper development and redevelopment of marginal properties, and the general welfare of the inhabitants of the port districts in which they exist require the remedying of such injurious conditions marginal properties are now subjected to; and

(2) The development and redevelopment of such marginal area properties cannot be accomplished by private enterprise alone without public participation and assistance in the acquisition of land and planning and in the financing of land assembly in the work of clearance, development and redevelopment, and in the making of improvements necessary therefor.

(3) To protect and promote sound development and redevelopment of marginal lands as hereinafter defined, and the general welfare of the inhabitants of the port districts in which they exist, to remedying such injurious conditions through the employment of all appropriate means.

(4) That whenever the development or redevelopment of such marginal lands cannot be accomplished by private enterprise alone, without public participation and assistance in the acquisition of land and planning and in financing of land assembly in the work of clearance, development and redevelopment, and in the making of improvements necessary therefor, it is in the public interest to employ the power of eminent domain, to advance and expend public moneys for those purposes, and to provide for means by which such marginal lands may be developed or redeveloped.

(5) That the development or redevelopment of such marginal lands and the provision of appropriate continuing land use constitute public uses and purposes for which public moneys may be advanced or expended and private property acquired, and are governmental functions and are of state concern in the interest of health, safety and welfare of the state of Washington, and of the communities in which such areas exist.

(6) That the necessity in the public interest for the provision of this chapter is declared to be a matter of legislative determination. [1955 c 73 § 1.]

53.25.020 Marginal lands—Further declaration. It is further found and declared that:

(1) The existence of such marginal lands characterized by any or all of such conditions constitutes a serious and growing menace which is condemned as injurious and inimical to the public health, safety, and welfare of the people of the communities in which they exist and of the people of the state.

(2) Such marginal lands present difficulties and handicaps which are beyond remedy and control solely by regulatory processes in the exercise of the police power.

(3) They contribute substantially and increasingly to the problems of, and necessitate excessive and disproportionate expenditures for, crime prevention, correction, prosecution and punishment, the treatment of juvenile delinquency, the preservation of the public health and safety, and the maintaining of adequate police, fire and accident protection and other public services and facilities.

(4) This menace is becoming increasingly direct and substantial in its significance and effect.

(5) The benefits which will result from the remedying of such conditions and the redevelopment of such marginal lands will accrue to all the inhabitants and property owners of the communities in which they exist.

(6) Such conditions of marginal lands tend to further obsolescence, deterioration, and disuse because of the lack of incentive to the individual landowner and his inability to improve, modernize, or rehabilitate his property while the condition of the neighboring properties remains unchanged.

(7) As a consequence the process of deterioration of such marginal lands frequently cannot be halted or corrected except by redeveloping the entire area, or substantial portions of it.

(8) Such conditions of marginal lands are chiefly found in areas subdivided into small parcels, held in divided and widely scattered ownerships, frequently under defective titles, and in many such instances the private assembly of the land areas for redevelopment is so difficult and costly that it is uneconomic and as a practical matter impossible for owners to undertake because of lack of the legal power and excessive costs.

(9) The remedying of such conditions may require the public acquisition at fair prices of adequate areas, the redevelopment of the areas suffering from such conditions under proper supervision, with appropriate planning, and continuing land use.

(10) The development or redevelopment of land, or both, acquired under the authority of this chapter constitute a public use and are governmental functions, and that the sale or leasing of such land after the same has been developed or redeveloped is merely incidental to the accomplishment of the real or fundamental purpose, that is, to remove the condition which caused said property to be marginal property as in this chapter defined. [1955 c 73 § 2.]

53.25.030 "Marginal lands" defined. "Marginal lands" is defined and characterized by any one or more of the following described conditions:

(1) An economic dislocation, deterioration, or disuse resulting from faulty planning.

(2) The subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development.

(3) The laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions.

(4) The existence of inadequate streets, open spaces, and utilities.

(5) The existence of lots or other areas which are subject to being submerged by water.

(6) By a prevalence of depreciated values, impaired investments, and social and economic maladjustment to such an extent that the capacity to pay taxes is reduced and tax receipts are inadequate for the cost of public services rendered.

(7) In some parts of marginal lands, a growing or total lack of proper utilization of areas, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to the public health, safety and welfare.

(8) In other parts of marginal lands, a loss of population and reduction of proper utilization of the area, resulting in its further deterioration and added costs to the taxpayer for the creation of new public facilities and services elsewhere.

(9) Property of an assessed valuation of insufficient amount to permit the establishment of a local improvement district for the construction and installation of streets, walks, sewers, water and other utilities.

(10) Lands within an industrial area which are not devoted to industrial use but which are necessary to industrial development within the industrial area. [1955 c 73 § 3.]

53.25.040 Industrial development districts authorized.

A port commission may, after a public hearing thereon, of which at least ten days' notice shall be published in a daily newspaper of general circulation in the port district, create industrial development districts within the district and define the boundaries thereof, if it finds that the creation of such industrial development district is proper and desirable in establishing and developing a system of harbor improvements and industrial development in such port district. [1955 c 73 § 4. Prior: 1943 c 166 § 1; 1939 c 45 § 1; Rem. Supp. 1943 § 9709-1; RCW 53.24.010.]

53.25.050 Tax title lands may be conveyed to district.

Any lands in an industrial development district acquired by the county by tax foreclosure, may, if the county commissioners deem the lands chiefly valuable for industrial development purposes, be conveyed to the port district. The lands shall be held in trust by the port district and may be managed, developed, leased, or sold by it as provided in this chapter.

From the proceeds of the sale or lease of the lands, the district shall first reimburse itself for any expense incurred by it in managing and developing the lands and any balance shall be paid to the county, which shall distribute it the same as general taxes collected in that year. [1955 c 73 § 5. Prior: 1939 c 45 § 2; RRS § 9709-2; RCW 53.24.020.]

53.25.060 Private lands may be conveyed to district—Cancellation of taxes. With the approval of the county commissioners, any lands in an industrial development district, owned privately, which the port commission deems valuable for industrial development purposes, may be deeded to and accepted by the port district, subject to delinquent general taxes thereon.

When the commission has recorded the deed and notified the county commissioners thereof, the county commissioners shall order all taxes assessed against the lands canceled and the county treasurer shall record the cancellation, and remove the lands from the tax rolls. Thereafter the lands shall be held in trust, managed, developed, leased, and sold by the district, and the proceeds therefrom disposed of in the same manner as hereinabove provided. [1955 c 73 § 6. Prior: 1939 c 45 § 3; RRS § 9709-3; RCW 53.24.030.]

53.25.070 Discharge of trust. With the approval of the county commissioners, a port district may free any lands acquired by it pursuant to this chapter from the trust imposed upon it herein, by paying to the county the amount of the delinquent taxes against the land at the time the county acquired it by tax foreclosure, or the amount of the delinquent taxes against it when it was conveyed to the district by the private owner. [1955 c 73 § 7. Prior: 1939 c 45 § 4; RRS § 9709-4; RCW 53.24.040.]

53.25.080 When lands revert to county. Ten years from the date of its acquisition, property acquired by a port district pursuant to this chapter shall revert to the county to be used the same as property acquired by tax foreclosure, and upon demand by the county commissioners the port commission shall convey the property to the county, unless before the expiration of the ten year period, the port district has adopted a comprehensive plan of harbor improvement which provides for the improvement of an industrial development district which includes such lands or the district has freed the land from the trust imposed upon it as provided in this chapter. [1955 c 73 § 8. Prior: 1939 c 45 § 8; RRS § 9709-8; RCW 53.24.050.]

53.25.090 Conditions precedent to making improvements. No expenditure for improvement of property in an industrial development district, other than the expense of preparing and submitting a plan of improvement shall be made by a port district, and no property shall be acquired by it therefor except as provided for hereinbefore until it has been made a part of the comprehensive scheme of harbor improvements and industrial developments or amendments thereto.

That said comprehensive scheme or amendments thereto shall provide for the development or redevelopment of those marginal lands acquired and a provision for the continuing of the land uses which are hereby declared to constitute public uses and the purposes for which public moneys may be advanced and provide property acquired. [1955 c 73 § 9. Prior: 1939 c 45 § 5; RRS § 9709-5; RCW 53.24.060.]

53.25.100 Powers as to industrial development districts. All port districts wherein industrial development districts have been established are authorized and empowered to acquire by purchase or condemnation or both, all lands, property and property rights necessary for the purpose of the development and improvement of such industrial development district and to exercise the

right of eminent domain in the acquirement or damaging of all lands, property and property rights and the levying and collecting of assessments upon property for the payment of all damages and compensation in carrying out the provisions for which said industrial development district has been created; to develop and improve the lands within such industrial development district to make the same suitable and available for industrial uses and purposes; to dredge, bulkhead, fill, grade, and protect such property; to provide, maintain, and operate water, light, power and fire protection facilities and services, streets, roads, bridges, highways, waterways, tracks, and rail and water transfer and terminal facilities and other harbor and industrial improvements; to execute leases of such lands or property or any part thereof; to establish local improvement districts within such industrial development districts which may, but need not, be coextensive with the boundaries thereof, and to levy special assessments, under the mode of annual installments, over a period not exceeding ten years, on all property specially benefited by any local improvement, on the basis of special benefits, to pay in whole or in part the damages or costs of any improvement ordered in such local improvement district; to issue local improvement bonds in any such local improvement district; to be repaid by the collection of local improvement assessments; and generally to exercise with respect to and within such industrial development districts all the powers now or hereafter conferred by law upon port districts in counties of the first class: *Provided*, That the exercise of powers hereby authorized and granted shall be in the manner now and hereafter provided by the laws of the state for the exercise of such powers by port districts under the general laws relating thereto insofar as the same shall not be inconsistent with this chapter. [1955 c 73 § 10. Prior: 1939 c 45 § 6; RRS § 9709-6; RCW 53.24.070.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); Title 8 RCW.

53.25.110 Sale authorized in industrial development district. When a port commission deems it for the best interests of the district and the people thereof and in furtherance of its general plan of harbor improvement, or industrial development, or both, it may sell and convey any property or part thereof owned by it within an industrial district. This section shall not be limited by chapter 53.08 RCW, pertaining to powers of port districts. [1955 c 73 § 11. Prior: 1939 c 45 § 9; RRS § 9709-9; RCW 53.28.010.]

53.25.120 Notice of hearing on sale—Hearing—Plans and specifications—Conditions—Devotion of property to public use. The port commission shall give notice of the proposed sale by publication in two newspapers published in the county, if there are two such newspapers, and by posting in three public places in the port district at least ten days before the date fixed for the hearing thereon.

The notice shall describe the property to be sold and state that at the time and place specified therein, the

commission will meet at its usual meeting place, designating it, to hear and determine the advisability of the sale.

The hearing shall be held not more than twenty days from the publication of notice. At the hearing the commission shall hear the reasons of any taxpayer in the port district, for or against the sale.

No sales shall be made, however, of the property of any industrial development district until the purchaser thereof shall have submitted to the port commission plans and specifications for the development of said property, and said plans and specifications shall be approved in writing before said property shall be conveyed, and the conditions upon which said properties are conveyed shall be set forth in the instrument conveying title thereof with the further condition that all of the said conditions set forth shall be covenants running with the land. All properties acquired in the manner herein set forth shall be devoted to the public use herein provided for. [1963 c 138 § 1; 1955 c 73 § 12. Prior: 1939 c 45 § 10; RRS § 9709-10; RCW 53.28.020.]

Validating—1963 c 138: "All sales made prior to the effective date of this amendatory act which are otherwise valid except for compliance with the limitation in section 12, chapter 73, Laws of 1955, which provided that the hearing shall be held not more than ten days from the publication of notice, are hereby ratified and validated.

All sales made prior to the effective date of this amendatory act under the provisions of section 18, chapter 73, Laws of 1955 and RCW 53.25.180 are hereby ratified and validated." [1963 c 138 § 3.]

53.25.130 Findings and determination—Record—Appeal. Within three days after the hearing the commission shall make its findings and determination on the advisability of making the sale and enter its determination in its records. Any aggrieved party may appeal the determination of the commission by filing appeal with the superior court of the county in which the district is located within twenty days of the entry of the determination but no appeal shall be allowed except on the grounds that the action of the commission was arbitrary, capricious, or unlawful. [1955 c 73 § 13. Prior: 1939 c 45 § 11; RRS § 9709-11; RCW 53.28.030.]

53.25.140 Action on determination—Notice for bids. If the determination is against the sale, all proceedings thereon shall terminate. If the commission determines in favor of the sale, it shall enter an order fixing a period, not less than twenty nor more than thirty days from the date of the order, during which bids will be received for the property or any part thereof, and give notice thereof in the same manner as for the hearing on the proposal to sell. [1955 c 73 § 14. Prior: 1939 c 45 § 12; RRS § 9709-12; RCW 53.28.040.]

53.25.150 Bids—Conditions—Acceptance. Bids may be submitted for the property or any part of it, and shall state the use which the bidder intends to make of it. The commission may require the successful bidder to file additional information as to the intended use, and may require of him security as assurance that the property will be used for that purpose.

All sales shall be made to the best bidder, and in determining the best bid, the commission may also consider the nature of the proposed use and the relation thereof to the improvement of the harbor and the business and facilities thereof.

Within thirty days after the last day for submitting bids, the commission shall decide which if any bids it accepts. All sales shall be made upon such terms and conditions as the commission may prescribe. [1955 c 73 § 15. Prior: 1939 c 45 § 13, part; RRS § 9709-13, part; RCW 53.28.050.]

53.25.160 Devotion of property to intended use—Remedy—Restraint on alienation. The purchaser shall, within one year from the date of purchase, devote the property to its intended use, or shall commence work on the improvements thereon to devote it to such use, and if he fails to do so, the port commission may cancel the sale and return the money paid on the purchase price, and title to the property shall revert to the district. This remedy shall be in addition to any other remedy under the terms of the sale. No purchaser shall transfer title to such property within one year from the date of purchase. [1955 c 73 § 16. Prior: 1939 c 45 § 13, part; RRS § 9709-13, part; RCW 53.28.060.]

53.25.170 Covenant running with the land—Forfeiture. All sales made in accordance with the provisions of this chapter shall have incorporated in the instrument of conveyance of title the conditions of this chapter relating to the use of the land as a covenant running with the land. Any violation of such covenant shall result in a right by the commission, as grantee, to forfeit the land. [1955 c 73 § 17.]

53.25.190 Eminent domain. All port districts of the state of Washington which have created or may hereafter create industrial development districts in the manner provided by law, in addition to all powers possessed by such port districts, be and are hereby granted power of eminent domain to acquire real property within the limits of such industrial development district which property is marginal lands as the term is herein defined. The exercise of the power granted in this section shall be exercised in the same manner and by the same procedure as in or may be provided by law for cities of the first class except insofar as such duties may be inconsistent with the provisions of this chapter and the duties devolving upon the city treasurer under said law be and the same are hereby imposed upon the county treasurer for the purposes of this chapter. [1955 c 73 § 19.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by cities: Chapter 8.12 RCW.

53.25.200 Advances of general fund moneys or credit. Port districts are hereby granted the power to advance their general fund moneys or credit, or both, without interest to accomplish the objects and purposes of this chapter, which fund shall be repaid from the sale or lease, or both, of such developed or redeveloped lands, provided, if the money advanced for such development or redevelopment was obtained from the sale of general

obligation bonds of the port, then such advances shall bear the same rate of interest that said bonds bore. [1955 c 73 § 20.]

53.25.210 Determination that land sought by eminent domain is marginal. The determination that property sought by eminent domain proceedings is marginal lands as herein defined is a judicial question, provided that a duly adopted resolution of the commissioners of the port district that the property sought is marginal lands as the term is herein defined, setting forth the characteristics of the lands sought to be acquired which constitutes the marginal lands as herein defined, shall be prima facie evidence that such land is marginal lands as defined in this chapter. [1955 c 73 § 21.]

53.25.900 Repeal and saving. Chapter 53.24 RCW and chapter 53.28 RCW and chapter 45, Laws of 1939, as last amended by section 1, chapter 166, Laws of 1943 are repealed: *Provided*, That nothing herein contained shall be construed as affecting any existing right acquired under the provisions of said act. [1955 c 73 § 22.]

53.25.910 Severability—1955 c 73. Should any section or provision of this chapter be held invalid by any court of competent jurisdiction, the same shall not affect the validity of the chapter as a whole or any part thereof other than the portion held to be invalid. [1955 c 73 § 23.]

Chapter 53.29 TRADE CENTER ACT

| | |
|-----------|---|
| Sections | |
| 53.29.010 | Declaration of purpose. |
| 53.29.020 | Power to establish trade centers—Facilities authorized. |
| 53.29.030 | Cooperation with other entities—Annual service fee for support of local government. |
| 53.29.900 | Short title—Liberal construction—Powers cumulative. |
| 53.29.910 | Severability—1967 c 56. |

53.29.010 Declaration of purpose. It is declared to be the finding of the legislature of the state of Washington that:

(1) The servicing functions and activities connected with the oceanborne and overseas airborne trade and commerce of port districts, including customs clearance, shipping negotiations, cargo routing, freight forwarding, financing, insurance arrangements and other similar transactions which are presently performed in various, scattered locations in the districts should be centralized to provide for more efficient and economical transportation of persons and more efficient and economical facilities for the exchange and buying, selling and transportation of commodities and other property in world trade and commerce;

(2) Unification, at a single, centrally located site of a facility of commerce, i.e., a trade center, accommodating the functions and activities described in subsection (1) of this section and the appropriate governmental, administrative and other services connected with or incidental to transportation of persons and property and

the promotion and protection of port commerce, and providing a central locale for exhibiting, and otherwise promoting the exchange and buying and selling of commodities and property in world trade and commerce, will materially assist in preserving the material and other benefits of a prosperous port community;

(3) The undertaking of the aforesaid unified trade center project by a port district has the single object of preserving, and will aid in the promotion and preservation of, the economic well being of the port district and the state of Washington and is found and determined to be a public purpose. [1967 c 56 § 1.]

53.29.020 Power to establish trade centers—Facilities authorized. In addition to all other powers granted to port districts, any such district may acquire, as provided for other port properties in RCW 53.08.010, construct, develop, operate and maintain all land or other property interests, buildings, structures or other improvements necessary to provide a trade center including but not limited to:

(1) A facility consisting of one or more structures, improvements and areas for the centralized accommodation of public and private agencies, persons and facilities in order to afford improved service to waterborne and airborne import and export trade and commerce;

(2) Facilities for the promotion of such import and export trade and commerce, inspection, testing, display and appraisal facilities, foreign trade zones, terminal and transportation facilities, office meeting rooms, auditoriums, libraries, language translation services, storage, warehouse, marketing and exhibition facilities, facilities for federal, state, county and other municipal and governmental agencies providing services relating to the foregoing and including, but not being limited to, customs houses and customs stores, and other incidental facilities and accommodations. [1967 c 56 § 2.]

53.29.030 Cooperation with other entities—Annual service fee for support of local government. In carrying out the powers authorized by this chapter, port districts are authorized to cooperate and act jointly with other public and private agencies, including, but not limited to the federal government, the state, other ports and municipal corporations, other states and their political subdivisions, and private nonprofit trade promotion and development organizations.

Port districts operating trade center buildings shall pay an annual service fee to the county treasurer wherein the center is located for municipal services rendered to the trade center building. The measure of such service fee shall be equal to three percent of the gross rentals received from the nongovernmental tenants of such trade center building. Such proceeds shall be distributed by the county treasurer as follows: Forty percent to the school district, forty percent to the city, and twenty percent to the county wherein the center is located: *Provided*, That if the center is located in an unincorporated area, twenty percent shall be allocated to the fire district, forty percent to the school district, and forty percent to the county. [1967 c 56 § 3.]

53.29.900 Short title—Liberal construction—Powers cumulative. This chapter, which may be known and cited as the "Trade Center Act", shall be liberally construed, its purpose being to provide port districts with additional powers to provide trade centers and to promote and encourage trade through the ports of the state of Washington. The powers herein granted shall be in addition to all others granted to port districts. [1967 c 56 § 4.]

53.29.910 Severability—1967 c 56. If any provision of this chapter, 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 and circumstances is not affected. [1967 c 56 § 5.]

Chapter 53.32

LEASE OF STATE OWNED HARBOR AREAS

Sections

| | |
|-----------|---|
| 53.32.010 | Authorization—Payment to state treasurer. |
| 53.32.020 | Exclusive preference right of abutting shoreland owners—Rights of others—Application, notice—Sale, notice of. |
| 53.32.050 | Performance bond—Cancellation—Tolls. |
| 53.32.060 | Acts hereunder not to work an estoppel. |
| 53.32.070 | Preference right on cancellation of existing lease. |
| 53.32.900 | Repeal—Saving. |

Tidelands, shorelands and harbor areas: Chapter 79.16 RCW.

53.32.010 Authorization—Payment to state treasurer. The port commission of each port district heretofore created or hereafter to be created under the laws of the state of Washington, shall have full power and authority in the manner hereinafter provided to lease the harbor areas belonging to the state of Washington, on fresh waters situate within such port district to such persons and upon such terms and conditions, as shall conform to the provisions of the Constitution of the state of Washington and the provisions of this chapter. Every such lease shall provide that the rental thereunder shall be payable to the state treasurer. [1917 c 93 § 1; RRS § 9719.]

Harbor area and tideland rental: RCW 79.16.180.

Restrictions on leases of harbor areas: State Constitution Art. 15 § 2.

53.32.020 Exclusive preference right of abutting shoreland owners—Rights of others—Application, notice—Sale, notice of. The owner or owners of any shoreland bordering upon any such harbor area, shall have a preference right for the period of time hereinafter mentioned, to lease such harbor area, at an annual rental hereinafter specified. The owner or owners of any such shorelands shall have the exclusive right for a period of six months following the filing of the plat of any such harbor area hereafter to be filed covering harbor area within the limits of any port district, or in case of such plats heretofore filed, then within six months following March 12, 1917, to file with said port commission a written application for the leasing of such harbor area and to thereafter obtain a lease of such harbor area for a period of thirty years. If such exclusive preference right shall not be exercised by said shore owner

within the time aforesaid, then any qualified person, firm or corporation may apply in writing to said port commission for the right to lease said harbor area; and upon the filing of such application, the said port commission shall forthwith notify the owner of the abutting shoreland of the pendency of said application and said owner shall be allowed sixty days from the date of the service of said notice, within which to exercise a preference right to lease said harbor area for a period of thirty years. If said owner be an actual resident of this state, notice shall be served upon him or it personally, but if he be not a resident of this state, said notice shall be sent to him by registered mail to his or its last known address; and if the address of said nonresident be not known to said port commission, no notice shall be required. In case the abutting shoreland owner shall not exercise the right to lease within said six months period, then the port commission, whenever it shall deem it advisable, may offer for lease any part of such harbor area and shall give sixty days notice by publication that a lease of such part of such harbor area will be sold, at a time and place to be specified in said notice, to the person, association or corporation offering at such public sale to pay the highest sum as a cash bonus for such lease; and in such case the port commission shall serve notice of such intended sale upon the abutting shoreland owner for sixty days, as above set forth, during which time said shoreland owner shall have the right to exercise said preference rights to lease on the terms aforesaid. If the abutting owner shall not have exercised his or its preference right to lease prior to the time of sale, such lease shall be sold and made and delivered accordingly, the payment of the sum offered by the successful bidder being required at the time of such sale. Every lease obtained by virtue of the exercise of any such exclusive or preference right shall conform to the provisions of the state Constitution and shall provide that the harbor area described therein or such a reasonable portion thereof as shall be designated by the port commission of such port district, having in view the requirements of the business proposed to be carried on thereon, shall be improved upon plans approved by such commission, the construction of such improvement to be commenced within such time as may be fixed in each case by such port commission, such time to be in no case less than two years from the date of such leases and to be completed within such reasonable time thereafter as such port commission shall fix in each case, any of which time so fixed may be thereafter extended by such commission, the character of which improvements may, with approval of the port commission, be changed either before or after completion but in all cases where the abutting owner or owners claiming under him, had prior to February 22, 1913, built upon such area, such improvements shall, so far as otherwise conforming to the provisions of the state Constitution be recognized and accepted as a sufficient compliance with the requirements of this chapter, so far as concerns the area covered thereby, and as to uncovered area such improvements shall be given the same consideration as any other case, and every lease obtained by virtue of

any such exclusive or preference right shall further provide that the annual rental to be paid shall be a sum equal to two percent of the assessed valuation for the year preceding the date of such lease of an equal area of adjoining or abutting shorelands exclusive of improvements thereon, and where the adjoining or abutting strip of shorelands is of less width than the harbor area, a value proportional to such width: *Provided further, however,* That the foregoing provision fixing the rate of rental shall not extend beyond December 21, 1928, but all rentals after that date shall be subject to be controlled and fixed in the manner and by the public authority or authorities then provided by law for the same. [1917 c 93 § 2; RRS § 9719. Formerly RCW 53.32.020 through 53.32.040.]

Restriction on leases: State Constitution Art. 15 § 2.

Terms of leases: RCW 79.16.020 and 79.16.030.

53.32.050 Performance bond—Cancellation—Tolls. The port commission shall require of every lessee under this chapter a bond with sufficient surety, to be approved by the port commission, in such penalty, and not exceeding twice the amount of the annual rental, but in no case less than five hundred dollars, as may be prescribed by the port commission, conditioned for the payment by the lessee of the rental reserved in his lease at or prior to the time of payment therein specified, during the term of such lease or during such part thereof as the port commission in its discretion shall require to be covered by such bond; and in case only a part of the term of such lease shall be covered thereby, said port commission shall require of such lessee another like bond, to be executed and delivered within three months and not less than one month prior to the expiration of the period covered by the previous bond, covering the remainder of the term of the lease, or such part thereof as the port commission in its discretion shall require to be covered thereby. The port commission shall have power at any time to summon sureties upon any bond and to examine into the sufficiency thereof, and if it shall find the same to be insufficient it shall require the lessee to file a new and sufficient bond within thirty days after receiving notice so to do, under penalty of cancellation of the lease; and the port commission shall have power upon sixty days' notice to cancel any lease for a substantial breach by the lessee of any of the conditions thereof, or for lack of a bond therewith as herein required. Notwithstanding any such lease now or hereafter existing the state shall ever retain and does hereby reserve the right to regulate the rates of wharfage, dockage or other tolls to be imposed by the lessee or his assigns upon commerce for any of the purposes for which the leased area may be used, and the right to prevent extortion and discrimination in such use thereof. [1917 c 93 § 3; RRS § 9721.]

53.32.060 Acts hereunder not to work an estoppel. The application for or the making or acceptance of any lease authorized by this chapter shall not work any estoppel against either party thereto or against those in privity with either party as to any claim or right which

might otherwise be made or contested. [1917 c 93 § 5; RRS § 9723.]

53.32.070 Preference right on cancellation of existing lease. The lessee under any lease now existing of harbor area on fresh water situate in a port district, which shall be canceled or annulled for any reason, shall, upon such cancellation or annulment, have, for ninety days thereafter, a preference right to a new lease, for the remainder of the term of the lease canceled or annulled, upon the terms and conditions provided in RCW 53.32.020 and 53.32.050; but in all cases where any canceled or annulled lease contained provisions relating to the right of the state to annul or cancel the same, like provision shall be incorporated in any new lease covering in whole or in part of the same area. [1917 c 93 § 4; RRS § 9722.]

53.32.900 Repeal—Saving. All acts and parts of acts in conflict with the provisions of this chapter are hereby repealed but no lease of harbor area heretofore executed shall be invalidated hereby. [1917 c 93 § 6; no RRS.]

Chapter 53.34 TOLL FACILITIES

| Sections | |
|-----------|--|
| 53.34.010 | Toll bridges, tunnels authorized—Highway approaches. |
| 53.34.020 | Contracts for use of projects—Regulations—Controversies. |
| 53.34.030 | Revenue bonds and notes—Authorized—Purposes—Sale, maturity, cost. |
| 53.34.040 | Bonds and notes—Resolution—Security—Form, interest, payment, etc. |
| 53.34.050 | Covenants to safeguard and secure bonds and notes. |
| 53.34.060 | Notes. |
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| 53.34.090 | Pledge of moneys, when binding—When lien attaches. |
| 53.34.100 | No personal liability on bonds or notes. |
| 53.34.110 | District may purchase bonds or notes. |
| 53.34.120 | State not to limit or alter rights of district or impair rights or remedies of bond or note holders. |
| 53.34.130 | Bonds, notes, obligations not state or district debt—No ad valorem taxes. |
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| 53.34.170 | District's power to acquire property, rights, etc.—Gifts—Condemnation—Contracts by public agencies authorized. |
| 53.34.180 | Public agencies authorized to contract with district for contribution of money, property, services, etc. |
| 53.34.190 | Bylaws, rules for management, uses, charges—Penalty for violation. |
| 53.34.200 | Actions for damages, injuries, death—Allegation in complaint of presentment of claim. |
| 53.34.210 | Actions—Statute of limitations—Notice and statement to be filed with district. |
| 53.34.220 | Chapter supplemental to other laws—Liberal construction. |
| 53.34.900 | Severability—1959 c 236. |
| 53.34.910 | Chapter controls inconsistent acts. |

53.34.010 Toll bridges, tunnels authorized—Highway approaches. In addition to all other powers granted to port districts, any such district may, with the consent of the state highway commission, acquire by condemnation, purchase, lease or gift, and may construct, reconstruct, maintain, operate, furnish, equip, improve, better, add to, extend and lease to others in whole or in part and sell in whole or in part any one or more of the following port projects, within or without or partially within and partially without the corporate limits of the district whenever the commission of the district determines that any one or more of such projects are necessary for or convenient to the movement of commercial freight and passenger traffic a part of which traffic moves to, from, or through the territory of the said district, to wit:

- (1) Toll bridges;
- (2) Tunnels under or upon the beds of any river, stream or other body of water, or through mountain ranges, and

In connection with the acquisition or construction of any one or more of such projects said port districts may, with the consent of the state highway commission, further acquire or construct, maintain, operate or improve limited or unlimited access highway approaches of such length as the commission of such district may deem advisable to provide means of interconnection of such facilities with public highways and of ingress and egress to any such project, including plazas and toll booths, and to construct and maintain under, along, over or across any such project telephone, telegraph or electric transmission wires and cables, fuel lines, gas transmission lines or mains, water transmission lines or mains, and other mechanical equipment not inconsistent with the appropriate use of such project, all for the purpose of obtaining revenues for the payment of the cost thereof. [1959 c 236 § 1.]

53.34.020 Contracts for use of projects—Regulations—Controversies. The district shall have the power to enter into a contract or contracts for the use of said projects, their approaches and equipment and from time to time to amend such contracts, with persons and with private and public corporations, and by said contracts to give such persons or corporations the right to use said projects, their approaches and equipment for the transmission of power for telephone and telegraph lines, for the transportation of water, gas, petroleum, and other products, for railroad and railway purposes, and for any other purpose to which the same may be adapted: *Provided*, That no such contract shall be for a period longer than ninety-nine years, and that the projects shall be put to the largest possible number of uses consistent with the purposes for which such projects are constructed.

In making such contract or contracts and providing for payments and rentals thereunder the port district shall determine the value of the separate and different uses to which the projects are to be put and shall apportion the annual rentals and charges as nearly as possible according to the respective values of such uses. No such contract shall be made with any person or

corporation unless and until such person or corporation shall bind himself or itself to pay as rental therefor an amount determined by the port district and specified in the contract which shall be a fair and just proportion of the total amount required to pay interest on the bonds provided for in this chapter, plus a just proportion of the amount necessary for their retirement, and plus the cost of maintenance of the projects, their approaches and equipment.

The port district may require any of such contracts to be entered into before beginning the construction of said projects or before the expenditure of funds under the provisions of this chapter if in its judgment it is deemed expedient.

There shall be no monopoly of the use of said projects, and their approaches by any one use, or by any person or corporation, private or public, in respect to the several uses, and the port district may continue to make separate, additional, and supplemental contracts for one or more uses until in the judgment of said port district the capacity of the projects and approaches for any such use has been reached. When such capacity has been reached contracts for the use of said projects shall be given preference in regard to such uses according to the public interest as determined by the port district, and subsequent contracts shall be subject to all existing and prior contracts. The port district shall have the power to prescribe regulations for the use of such facilities by the parties to contracts for such use, or any of them, and to hear and determine all controversies which may arise between such parties, under such rules as the port district may from time to time promulgate; and all contracts shall expressly reserve such power to the port district. [1959 c 236 § 2.]

53.34.030 Revenue bonds and notes—Authorized—Purposes—Sale, maturity, cost. Whenever any port district shall determine to acquire or construct any one or more projects authorized under the provisions of this chapter, the commission of such district shall have the power and is authorized to issue negotiable revenue bonds and notes from time to time in one or more series or installments in such principal amount as, in the opinion of the commission, shall be necessary to provide sufficient money for the acquisition, construction, reconstruction, extension or improvement thereof as set forth in RCW 53.34.010, including engineering, inspection, legal and financial fees and costs, working capital, interest on such bonds and notes during construction and for a reasonable period thereafter, establishment of reserves to secure such bonds and notes and all other expenditures of such district incidental, necessary or convenient to the establishment of such projects on a sound financial basis, and to issue negotiable revenue bonds and notes for the purpose of renewing or refunding such outstanding bonds and notes in whole or in part at or prior to maturity. All such revenue bonds or notes and coupons thereto attached shall be negotiable instruments within the meaning and purposes of the negotiable instruments law and shall be sold by the commission in such manner and for such price as the commission deems for the

best interests of the district: *Provided*, That the commission may provide in any contract for the construction or acquisition of all or any part of a project or projects or for the additions or betterments thereto or extensions or improvements thereof that payment therefor shall be made only in such revenue bonds or notes: *Provided further*, That any revenue bonds issued under the authority of this act shall have a final maturity not to exceed forty years from date of issue. [1970 ex.s. c 56 § 69; 1969 ex.s. c 232 § 79; 1959 c 236 § 3.]

Purpose—Effective date—1970 ex.s. c 56: See notes following RCW 39.44.030.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.44.030.

53.34.040 Bonds and notes—Resolution—Security—Form, interest, payment, etc. Revenue bonds and notes may be issued by one or more resolutions and may be secured by trust agreement by and between the district and one or more corporate trustees, depositories, or fiscal agents, which may be any trust company or state or national bank having powers of a trust company within or without the state of Washington. Such bonds or notes shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places within or without the state of Washington, and be subject to such terms of redemption and at such redemption premiums as such resolution, resolutions, or trust agreements may provide. No proceedings for the issuance of such bonds or notes shall be required other than those required by the provisions of this chapter, and none of the provisions of any other laws relative to the terms and conditions for the issuance, payment, redemption, registration, sale or delivery of bonds of public bodies, corporation, or political subdivisions of this state shall be applicable to bonds or notes issued by port districts pursuant to this chapter. [1970 ex.s. c 56 § 70; 1969 ex.s. c 232 § 80; 1959 c 236 § 4.]

Purpose—Effective date—1970 ex.s. c 56: See notes following RCW 39.44.030.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.44.030.

53.34.050 Covenants to safeguard and secure bonds and notes. Any resolution, resolutions, or trust agreements authorizing the issuance of any bonds or notes of a port district may contain covenants and agreements on the part of the district to protect and safeguard the security and payment of such bonds or notes, which shall be a part of the contract with the holders of such obligations thereby authorized as to:

(1) Pledging all or any part of the revenues, income, receipts, profits and other moneys derived by the district issuing such obligations from the ownership, operation, management, lease, or sale of any one or more of the projects constructed from the proceeds thereof to secure the payment of bonds or notes;

(2) The establishment and collection of rates, rentals, tolls, charges, license, and other fees to be charged by the district and the amounts to be raised in each year for the services and commodities sold, leased, furnished, or supplied by any one or more of the projects established from the proceeds of such obligations, and the deposit, use, and disposition of the revenues of the district received therefrom;

(3) The setting aside of reserves or sinking funds for such obligations, and the deposit, investment, and disposition thereof;

(4) Limitations on the purpose or purposes to which the proceeds of sale of any issue of bonds or notes then or thereafter issued payable from the revenues of any such project or projects may be applied, and pledging such proceeds to secure the payment of such bonds or notes;

(5) Limitations on the issuance of additional revenue bonds or notes of the district, the terms and conditions upon which such additional revenue bonds or notes may be issued and secured, and the refunding of outstanding or other bonds or notes;

(6) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which such consent may be given;

(7) Limitations on the amount of moneys derived from any project or projects to be expended for operating, administrative or other expenses of the district in connection with any such project or projects;

(8) The employment of independent auditors and engineers or other technical consultants to advise and assist the district in the operation, management, and improvement of any project or projects;

(9) Limitations or prohibitions on rendering free service in connection with any project or projects;

(10) Specifying conditions constituting events of default and vesting in one or more trustees including trustees which may be appointed by the bondholders and noteholders, such special rights, property rights, powers, and duties with respect to the property and revenues of any project or projects as the commission of the district may deem advisable the better to secure the payment of such bonds and notes;

(11) Prescribing conditions controlling the acquisition, sale, lease, or other disposition of real and personal property used or useful in connection with any project or projects, the amount and kinds of policies of insurance to be carried by the district in connection therewith, and the use and disposition of the proceeds of policies of insurance; and

(12) Any other matters of like or different character which in any way affect the security or protection of bonds or notes of the district. [1959 c 236 § 5.]

53.34.060 Notes. A district shall have power from time to time to issue bond anticipation revenue notes (herein referred to as notes), and from time to time to issue renewal notes, such notes in any case to mature not later than six years from the date of incurring the

indebtedness represented thereby in an amount not exceeding in the aggregate at any time outstanding the amount of revenue bonds then or theretofore authorized but not issued. Payment of such notes shall be made from any moneys or revenue which the district may have available for such purpose or the proceeds of the sale of revenue bonds of the district, or such notes may be exchanged for a like amount of such revenue bonds bearing the same or a lower or higher rate of interest than that borne by such notes.

All notes may be issued and sold in the same manner as revenue bonds. Any district shall have power to make contracts for the future sale from time to time of notes on terms and conditions stated in such contracts, and the district shall have power to pay such consideration as it shall deem proper for any commitments to purchase notes in the future. Such notes may also be collaterally secured by pledges and deposits with a bank or trust company, in trust for the payment of said notes, of revenue bonds in an aggregate amount at least equal to the amount of such notes and, in any event, in amount deemed by the district sufficient to provide for the payment of the notes in full at the maturity thereof. The district may provide in such collateral agreement that the notes may be exchanged for revenue bonds held as collateral security for the notes, or that the trustee may sell the revenue bonds if the notes are not otherwise paid at maturity and apply the proceeds of such sale to the payment of the notes. Such notes shall bear interest at a rate or rates as authorized by the port commission. [1970 ex.s. c 56 § 71; 1969 ex.s. c 232 § 81; 1959 c 236 § 6.]

Purpose—Effective date—1970 ex.s. c 56: See notes following RCW 39.44.030.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.44.030.

53.34.070 Bonds and notes payable solely from revenues, etc.—Adequate rates and charges to be established. Revenue bonds and notes issued under the provisions of this chapter shall be payable solely from the revenues, income, receipts, profits, charges, fees, rentals, and moneys received or derived by or through the ownership, operation, sale, lease, or other disposition in whole or in part of any project or projects authorized under the provisions of this chapter, or through the issuance of refunding bonds or notes, and the commission of any district issuing revenue bonds or notes under the authority of this chapter shall establish, maintain, and collect rates, tolls, rents, and charges from time to time so long as any of such revenue bonds are outstanding and unpaid for all services sold, furnished, or supplied by or through any such project or projects sufficient to produce an amount, together with any other moneys of the district available and dedicated to such purpose, to pay the principal of and interest and premium, if any, on all revenue bonds and notes payable from the revenues of any project or projects as the same may respectively fall due in accordance with the terms of the resolution or resolutions or trust agreement authorizing the issuance and securing the payment of such obligations. [1959 c 236 § 7.]

53.34.080 Special funds and accounts—Disposition. The resolution, resolutions, or trust agreement providing for the issuance of revenue bonds or notes pursuant to the provisions of this chapter shall create and establish a special fund of the district into which the district shall be obligated to deposit as collected all income, revenues, receipts, and profits derived by the district through the ownership and operation of any project or projects acquired or constructed from the proceeds of the sale of such revenue bonds or notes: *Provided*, That additional separate special funds or accounts may be created by such resolution or trust agreement into which the district may obligate itself to deposit the proceeds of the sale of such revenue bonds and notes, the proceeds of the sale or other disposition in whole or in part of any project or projects, the proceeds of any policies of insurance on such projects, and any other additional moneys received by the district and applicable to such projects. All such moneys shall be held by the district, the depositories and trustees of such funds and accounts, in trust for the equal and ratable benefit and security of the holders from time to time of the revenue bonds and notes issued pursuant to the resolution, resolutions, or trust agreement establishing such special funds or accounts, and shall be collected, held, deposited, and disbursed solely for the acquisition, construction, operation, maintenance, renewal, replacement, improvement, extension, and betterment of such project or projects and the payment of the principal of and interest and premium, if any, on the revenue bonds and notes issued pursuant to such resolution, resolutions, or trust agreements, and the creation and maintenance of reasonable reserves for all such purposes: *Provided, however*, That the district may in its discretion and subject to any agreements with the holders of such revenue bonds and notes expend amounts of such moneys as are not required for the purposes aforesaid for other corporate purposes of the district.

The district may pledge such moneys or revenues of the district subject to prior pledges thereof, if any, for the payment of such notes and may in addition secure the notes in the same manner as herein provided for revenue bonds. [1959 c 236 § 8.]

53.34.090 Pledge of moneys, when binding—When lien attaches. It is the intention hereof that any pledge of revenues, income, receipts, profits, charges, fees, or other moneys made by a district for the payment of bonds shall be valid and binding from the time of the adoption of any resolution or the execution of any trust agreement making such pledge notwithstanding the fact that there may not then be any simultaneous delivery thereof, that the revenues, income, receipts, profits, charges, fees, and other moneys so pledged shall as soon as received by the district immediately be subject to the lien of such pledge without the physical delivery thereof and without further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the district irrespective of whether such parties have notice thereof. Neither the resolution,

resolutions, or trust agreement authorizing revenue bonds or notes nor any other instrument by which such a pledge is created need be recorded to be effective. [1959 c 236 § 9.]

53.34.100 No personal liability on bonds or notes. Neither the members of a commission nor any person executing revenue bonds or notes shall be liable personally on such bonds or notes, or be subject to any personal liability or accountability by reason of the issuance thereof. [1959 c 236 § 10.]

53.34.110 District may purchase bonds or notes. A district shall have power out of any funds available therefor to purchase revenue bonds or notes of such district. Any bonds or notes so purchased may be held, canceled, or resold by the district subject to and in accordance with any resolution or resolutions or trust agreements with bondholders. [1959 c 236 § 11.]

53.34.120 State not to limit or alter rights of district or impair rights or remedies of bond or note holders. The state of Washington does hereby covenant and agree with the holders of revenue bonds or notes issued by a district under the authority of this chapter that the state will not limit or alter the rights hereby vested in a district to acquire, maintain, construct, reconstruct, improve, extend, add to, better and operate the projects authorized to be constructed or acquired under the provisions hereof and to establish, collect, and pledge such rates, rentals, tolls, charges, license, and other fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such projects and to fulfill the terms of any agreements made with holders of such revenue bonds and notes or in any way impair the rights and remedies of bondholders and noteholders until the bonds or notes together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully met and discharged. The provisions of this chapter and of the resolutions, trust agreements and proceedings authorizing revenue bonds and notes hereunder shall constitute a contract with the holders of said bonds and notes. [1959 c 236 § 12.]

53.34.130 Bonds, notes, obligations not state or district debt—No ad valorem taxes. The revenue bonds, revenue notes, and any other obligations of a district issued under the authority of this chapter shall not be a debt of the state of Washington or of any political subdivision of this state, nor shall such obligations be considered indebtedness of the port district issuing same within any constitutional, statutory, or other limitation of indebtedness, and neither the state nor any political subdivision thereof, including the port district issuing such revenue bonds or notes, shall ever become obligated to levy ad valorem taxes on any taxable property within the state for the payment of such revenue bonds and notes, but such revenue bonds and notes shall be payable solely from and shall be a charge only upon the

revenues and other funds of the project or projects pledged to the payment thereof by the proceedings authorizing the issuance of such bonds and notes. [1959 c 236 § 13.]

53.34.140 Registration of bonds and notes—Prima facie validity. Prior to the issuance and delivery of revenue bonds or notes under the authority of this chapter, such revenue bonds or notes and a certified copy of the resolution, resolutions, or trust agreements authorizing such revenue bonds or notes shall be forwarded by the port commission to the state auditor together with any additional information requested by him, and when such revenue bonds or notes have been examined they shall be registered by the auditor in books to be kept by him for that purpose, and a certificate of registration shall be endorsed upon each such revenue bond or note and signed by the auditor or a deputy appointed by him for that purpose.

Revenue bonds or notes so registered shall then be prima facie valid and binding obligations of the port district in accordance with the terms thereof, notwithstanding any defect or irregularity in the proceedings for the authorization and issuance of such revenue bonds or notes or in the sale, execution or delivery thereof or in the application of the proceeds thereof. [1959 c 236 § 14.]

53.34.150 Bonds and notes as legal investment and security. Revenue bonds and notes issued under the authority of this chapter are made securities in which all public officers and bodies of this state, all municipalities and municipal subdivisions and all other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds and notes are also made securities which may be deposited with and shall be received by all public officers and bodies of this state, all municipalities, municipal subdivisions, and other political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized. [1959 c 236 § 15.]

53.34.160 Projects declared public benefit and governmental function—Covenant by state with bond and note holders—Tax exemption. It is found, determined, and declared that the creation and establishment of projects authorized by this chapter are in all respects for the benefit of the people of the state of Washington, for the improvement of their welfare and prosperity,

and for the promotion of intrastate, interstate, and foreign commerce, the transportation of freight, commercial, and passenger traffic, is a public purpose, that such projects operated by port districts are essential parts of the public transportation system, and that such districts will be performing essential governmental functions in the exercise of the powers conferred upon them by this chapter; and the state of Washington covenants with the holders of revenue bonds and notes that port districts shall not be required to pay any taxes or assessments, or other governmental charges in lieu thereof, upon any of the property acquired by them or under their respective jurisdictions, control, possession, or supervision, upon the activities of port districts in the operation and maintenance of such projects, or upon any charges, fees, rentals, revenues, or other income received by such districts from such projects and that the revenue bonds and notes of port districts and the income therefrom shall at all times be exempt from all taxation in the state of Washington, except transfer, inheritance, and estate taxes. This section shall constitute a covenant and agreement with the holders of all revenue bonds and notes issued by port districts pursuant to the provisions of this chapter. [1959 c 236 § 16.]

53.34.170 District's power to acquire property, rights, etc.—Gifts—Condemnation—Contracts by public agencies authorized. In the acquisition, construction, reconstruction, improvement, extension, or betterment of any project or projects authorized under the provisions of this chapter any port district creating and establishing any such project or projects may have and exercise all of the powers heretofore or hereafter granted to port districts for corporate purposes and, in addition thereto, may acquire by gift or grant, lease, purchase, or condemnation any public and private property, franchises and property rights, including state, county, and school lands and property, and littoral and water rights whether or not any such property is then devoted to public or quasi public proprietary or governmental use: *Provided*, That the court shall find that the proposed condemnation of any property already devoted to a public use is for a higher public use, and may by appropriate contracts with any city, county, or other political subdivision of the state, with the state and any department of the government of the state (hereinafter referred to collectively as public agencies), or with any department, instrumentality or agency of the United States, acquire title to or the use of existing roads, streets, parkways, avenues, or highways or the closing of any roads, streets, parkways, avenues, or highways as may be necessary or convenient to the acquisition, construction, or operation of any such project or projects under such terms and conditions as may be mutually agreed upon. All public agencies are authorized to enter into contracts with port districts for the aforesaid purposes. [1959 c 236 § 17.]

53.34.180 Public agencies authorized to contract with district for contribution of money, property, services, etc. Any public agency, including without limitation the aeronautics commission, the department of highways

and the state toll bridge authority, may contract with any port district, constructing a project or projects under the authority of this chapter, for the contribution of moneys or real or personal property in aid of the construction of such projects, or for the furnishing of engineering, legal, police, and fire protection, and all other services necessary or convenient to the acquisition, construction, reconstruction, operation, maintenance, renewal, replacement, improvement, additions to, or extension of any such project or projects, such contracts to run for such period of years and to contain such terms and conditions as the parties thereto shall mutually agree upon. Any public agency, by resolution, may authorize the execution of such contracts with a port district and no other authorization on the part of such public agency shall be necessary, any provision of laws or of a city charter to the contrary notwithstanding. Obligations assumed by a public agency pursuant to such contracts entered into under the authority of this chapter shall be included and provided for in each annual budget of such public agency thereafter made until all such obligations have been fully discharged. [1959 c 236 § 18.]

53.34.190 Bylaws, rules for management, uses, charges—Penalty for violation. Any port district establishing a project under the authority of this chapter may make such bylaws, rules, and regulations for the management and use of such project and for the collection of rentals, tolls, fees, and other charges for services or commodities sold, furnished or supplied through such project, and the violation of any such bylaw, rule, or regulation shall be an offense punishable by fine not to exceed one hundred dollars or by imprisonment for not longer than thirty days, or both. [1959 c 236 § 19.]

53.34.200 Actions for damages, injuries, death—Allegation in complaint of presentment of claim. In every action against a district for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death arising in connection with the acquisition, construction, reconstruction, operation, or maintenance of a project authorized by the provisions of this chapter, the complaint shall contain an allegation that at least thirty days have elapsed since a demand, claim, or claims upon which such action is founded were presented to the secretary of the district, or to its chief executive officer, and that the district has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment. [1959 c 236 § 20.]

53.34.210 Actions—Statute of limitations—Notice and statement to be filed with district. No action against a district for damages for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death, alleged to have been sustained in connection with the acquisition, construction, reconstruction, operation, or maintenance of a project shall be commenced more than one year after the cause of action therefor shall have accrued nor unless a notice of intention to commence such action and of the time

when and place where the damages or personal injuries or death were incurred or sustained, together with a verified statement showing in detail the property alleged to have been damaged or destroyed and the value thereof or the personal injuries alleged to have been sustained and by whom, shall have been filed with the secretary of the district in the principal office of the district within six months after such cause of action shall have accrued. [1959 c 236 § 21.]

53.34.220 Chapter supplemental to other laws—
Liberal construction. The powers and rights granted to port districts and public agencies by the provisions of this chapter are in addition and supplemental to and not in substitution of the powers and rights heretofore or hereafter granted to such districts and public agencies by any other law or city charter, and no limitations or restrictions or proceedings for the exercise of powers and rights by port districts and public agencies contained in any other laws or city charters shall apply to the exercise of powers and rights granted by the provisions of this chapter, and the provisions of this chapter shall be liberally construed to permit the accomplishment of the purposes hereof. [1959 c 236 § 22.]

53.34.900 Severability—1959 c 236. If any section, clause or provision of this chapter shall be declared unconstitutional or invalid in whole or in part, to the extent that this chapter is not unconstitutional or invalid this chapter shall be valid and effective, and no other section, clause, or provision hereof shall on account of such declaration be deemed invalid or ineffective. [1959 c 236 § 23.]

53.34.910 Chapter controls inconsistent acts. Insofar as the provisions of this chapter are inconsistent with the provisions of any other act or of any city charter, the provisions of this chapter shall be controlling. [1959 c 236 § 24.]

Chapter 53.35 BUDGETS

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| Sections | |
| 53.35.010 | Preliminary budget. |
| 53.35.020 | Publication of notice of preliminary budget and hearing. |
| 53.35.030 | Hearing—Final budget. |
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| 53.35.060 | Fiscal year. |
| 53.35.070 | Chapter exclusive method for budgets. |
| 53.35.071 | Expenditures for industrial development, trade promotion or promotional hosting—Budgeting required. |
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53.35.010 Preliminary budget. On or before the 15th day of September of each year each port commission shall prepare a preliminary budget of the port district for the ensuing fiscal year showing the estimated expenditures and the anticipated available funds from which all expenditures are to be paid. [1959 c 159 § 1.]

53.35.020 Publication of notice of preliminary budget and hearing. Following the preparation of the preliminary budget, the port commission shall publish a notice stating that the preliminary budget of the port district has been prepared and placed on file at the office of the port district; that a copy thereof may be obtained by any taxpayer at an address set forth in the notice; that the commission will meet at a date, hour and place set forth in the notice, such date to be not earlier than September 15th and not later than the first Tuesday following the first Monday in October, for the purpose of fixing and adopting the final budget of the port district for the ensuing year. The notice shall be published once each week for two consecutive weeks in a legal newspaper of the district, or if there is none, in any newspaper of general circulation in the county, the first publication to be not less than nine days nor more than twenty days prior to the date of the hearing. [1959 c 159 § 2.]

53.35.030 Hearing—Final budget. On the day set by the notice provided for in RCW 53.35.020 the commission shall meet at the place and hour designated for the purpose of a hearing on the budget and adoption of a final budget. Any person may present objections to the preliminary budget following which the commission shall, by resolution adopt a final budget. [1959 c 159 § 3.]

53.35.040 Final budget to be filed with county commissioners. It shall be the duty of the commissioners of port districts, for the purpose of levying port district taxes, to file with the clerk of the board of county commissioners on or before the Wednesday next following the first Monday in October in each year a certified copy of such final budget which shall specify the amounts to be raised by taxation on the assessed valuation of the property in the port district. [1959 c 159 § 4.]

53.35.045 Alternate date for filing final budget. Notwithstanding any provision of law to the contrary, the board of commissioners of a port district may file with the clerk of the county legislative authority a certified copy of the port district final budget, provided for in RCW 53.35.040, on the first Monday in December. The board of port commissioners may also set other dates relating to the budget process, including but not limited to the dates set in RCW 53.35.010 and 53.35.020 to conform to the alternate date for final budget filing. [1974 1st ex.s. c 19 § 1.]

53.35.050 Supplemental budgets. A port commission may adopt by resolution one or more supplemental budgets at any time during the fiscal year. Such supplemental budget shall be adopted only after public hearing. Notice of such hearing shall be given by a single publication of notice of the date, place and hour of the hearing in a legal newspaper of the district, or if there is none, in any newspaper of general circulation in the county, the publication of such notice to be at least five days and not more than fifteen days prior to the hearing date. [1959 c 159 § 5.]

53.35.060 Fiscal year. The fiscal year for a port district shall be the calendar year. [1959 c 159 § 6.]

53.35.070 Chapter exclusive method for budgets. The provisions of this chapter shall constitute the exclusive requirement and authority for the preparation, adoption, certification and filing of port district budgets. [1959 c 159 § 7.]

53.35.071 Expenditures for industrial development, trade promotion or promotional hosting—Budgeting required. See RCW 53.36.120.

53.35.900 Severability—1959 c 159. Should any section or parts of sections of this chapter be declared unconstitutional it shall in no case affect the validity of other provisions of this chapter. [1959 c 159 § 8.]

**Chapter 53.36
FINANCES**

- Sections
- 53.36.010 District treasurer.
- 53.36.020 Tax levy—Limitation.
- 53.36.030 Indebtedness—Limitation.
- 53.36.040 Funds in anticipation of revenues.
- 53.36.050 County treasurer—General and special funds—Depositories—Investment of excess funds.
- 53.36.060 Incidental expense fund.
- 53.36.070 Levy for dredging, canal construction, or land leveling or filling purposes.
- 53.36.080 Collection of levies for dredging, canal construction, or land leveling or filling purposes.
- 53.36.090 Revenue bonds for national defense.
- 53.36.100 Levy for industrial development district purposes—Fund for future use.
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- 53.36.120 Expenditures for industrial development, trade promotion or promotional hosting—Budgeting required.
- 53.36.130 Expenditures for industrial development, trade promotion or promotional hosting—Source and amount of funds.
- 53.36.140 Expenditures for industrial development, trade promotion or promotional hosting—Rules and regulations—Authorizations—Vouchers.
- 53.36.150 Expenditures for industrial development, trade promotion or promotional hosting—Duties of state auditor.

Accounting system and state examination: RCW 43.09.190 through 43.09.280.

Disposition of rentals from state owned harbor areas and tidelands within a port district: RCW 79.16.180.

Disposition of rentals from waterways located within a port district: RCW 79.16.190.

Tax district relief: Chapter 39.64 RCW.

Vouchers on public funds: Chapter 42.24 RCW.

53.36.010 District treasurer. The treasurer of the county in which a port district is located shall be treasurer of the district unless the treasurer authorizes the commission to designate by resolution some other person having experience in financial or fiscal matters as treasurer of the port district to act with the same powers and under the same restrictions as provided by law for a county treasurer acting on behalf of a port district. The commission 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 commission by resolution from time to time finds will protect the district against loss. The premium on such bonds shall be paid by the district. All district funds shall be paid to the treasurer and shall be disbursed by him upon warrants signed by a port auditor appointed by the port commission, upon vouchers approved by the commission. [1974 1st ex.s. c 13 § 1; 1955 c 348 § 5. Prior: 1921 c 179 § 1, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Severability—1955 c 348: See note following RCW 53.08.120. *County treasurer, calling warrants: RCW 36.29.060.*

53.36.020 Tax levy—Limitation. A district may raise revenue by levy of an annual tax not to exceed forty-five cents per thousand dollars of assessed value against the assessed valuation of the taxable property in such port district for general port purposes, including the establishment of a capital improvement fund for future capital improvements, except that any levy for the payment of the principal and interest of the general bonded indebtedness of the port district shall be in excess of any levy made by the port district under the forty-five cents per thousand dollars of assessed value limitation. The levy shall be made and taxes collected in the manner provided for the levy and collection of taxes in school districts of the first class. [1973 1st ex.s. c 195 § 56; 1955 c 65 § 11. Prior: 1951 c 133 § 1; 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Budgets: Chapter 53.35 RCW.

Levy of taxes: Chapter 84.52 RCW.

Port districts excepted from forty mill limit: State Constitution Art. 7 § 2 (Amendment 17); RCW 84.52.050 through 84.52.056.

School district levy: Chapter 28A.44 RCW.

53.36.030 Indebtedness—Limitation. A district may at any time contract indebtedness or borrow money for district purposes and may issue general obligation bonds therefor not exceeding an amount, together with any existing indebtedness of the district not authorized by the voters, of one-fourth of one percent of the value of the taxable property in the district; and, with the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, may ~~contract~~ ^{contract} indebtedness or borrow money for district purposes and may issue general obligation bonds therefor provided the total indebtedness of the district at any such time shall not exceed three-fourths of one percent of the value of the taxable property in the district: *Provided further,* That port districts having less than two hundred million dollars in value of taxable property and operating a municipal airport may at any time contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor not exceeding an additional one-eighth of one percent of the value of the taxable property in the district without authorization by

the voters; and, with the assent of three-fifths of the voters voting thereon at a general or special port election called for that purpose, may contract indebtedness or borrow money for airport capital improvement purposes and may issue general obligation bonds therefor for an additional three-eighths of one percent provided the total indebtedness of the district for all port purposes at any such time shall not exceed one and one-fourth percent of the value of the taxable property in the district. Any district may issue general district bonds evidencing any indebtedness, payable at any time not exceeding fifty years from the date of the bonds.

The term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015. [1970 ex.s. c 42 § 32; 1965 ex.s. c 54 § 1; 1959 c 52 § 1; 1955 c 65 § 12. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Elections to authorize port district bonds: Chapter 39.40 RCW.

General provisions applicable to district bonds: Chapter 39.44 RCW.

Limitation upon indebtedness: State Constitution Art. 8 § 6 (Amendment 27); Chapter 39.36 RCW.

Port district indebtedness authorized, emergency public works: RCW 39.28.030.

53.36.040 Funds in anticipation of revenues. Any port commission is hereby authorized, prior to the receipt of taxes raised by levy, to borrow money or issue the warrants of the district in anticipation of the revenues to be derived by such district and such warrants shall be redeemed from the first money available from such taxes when collected. [1921 c 179 § 2; 1911 c 92 § 12; RRS § 9699.]

53.36.050 County treasurer—General and special funds—Depositories—Investment of excess funds. The county treasurer acting as port treasurer shall create a fund to be known as the "Port of ----- Fund," into which shall be paid all money received by him from the collection of taxes in behalf of such port district, and shall also maintain such other special funds as may be created by the port commission into which shall be placed such moneys as the port commission may by its resolution direct. All such port funds shall be deposited with the county depositories under the same restrictions, contracts and security as is provided by statute for county depositories and all interest collected on such port funds shall belong to such port district and shall be deposited to its credit in the proper port funds: *Provided*, That any portion of such port moneys determined by the port commission to be in excess of the current needs of the port district may be invested in certificates, notes, bonds, or other obligations of the United States of America, or any agency or instrumentality thereof, and all interest collected thereon shall likewise belong to such port district and shall be deposited to its credit in the proper port funds. [1959 c 52 § 2; 1921 c 179 § 3; 1911 c 92 § 13; RRS § 9700.]

County depositories: Chapter 36.48 RCW.

53.36.060 Incidental expense fund. The port commission of any port district may, by resolution, create an incidental expense fund in such amount as the port commission may direct. Such incidental expense fund may be kept and maintained in a bank or banks designated in the resolution creating the fund, and such depository shall be required to give bonds or securities to the port district for the protection of such incidental expense fund, in the full amount of the fund authorized by the said resolution. Vouchers shall be drawn to reimburse said incidental expense fund and such vouchers shall be approved by the port commission. Transient labor, freight, express, cartage, postage, petty supplies, and minor expenses of the port district may be paid from said incidental expense fund and all such disbursements therefrom shall be by check of the port auditor or such other officer as the port commission shall by resolution direct. All expenditures from said incidental expense fund shall be covered by vouchers drawn by the port auditor and approved by the manager or such other officer of the port district as the port commission may by resolution direct. The officer disbursing said fund shall be required to give bond to the port district in the full authorized amount of the said incidental expense fund for the faithful performance of his duties in connection with the disbursement of moneys from such fund. [1933 c 189 § 16; RRS § 9699–1.]

53.36.070 Levy for dredging, canal construction, or land leveling or filling purposes. Any port district organized under the laws of this state shall, in addition to the powers otherwise provided by law, have the power to raise revenue by the levy and collection of an annual tax on all taxable property within such port district of not to exceed forty-five cents per thousand dollars of assessed value against the assessed valuation of the taxable property in such port district, for dredging, canal construction, or land leveling or filling purposes, the proceeds of any such levy to be used exclusively for such dredging, canal construction, or land leveling and filling purposes: *Provided*, That no such levy for dredging, canal construction, or land leveling or filling purposes under the provisions of RCW 53.36.070 and 53.36.080 shall be made unless and until the question of authorizing the making of such additional levy shall have been submitted to a vote of the electors of the district in the manner provided by law for the submission of the question of making additional levies in school districts of the first class at an election held under the provisions of RCW 29.13.030 and shall have been authorized by a majority of the electors voting thereon. [1973 1st ex.s. c 195 § 57; 1965 ex.s. c 22 § 1; 1925 c 29 § 1; RRS § 9692–1.]

Reviser's note: RCW 29.13.030 was repealed by 1965 c 123 § 9(12). For later enactment, see RCW 29.13.020.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

53.36.080 Collection of levies for dredging, canal construction, or land leveling or filling purposes. Whenever such additional levy for dredging, canal construction, or land leveling or filling purposes shall have been

authorized by the electors of the district at an election, held subsequent to the time of making the levy for the district for general purposes, in any year, such levy shall be certified by the port commission in the manner provided by law for certifying levies for general purposes of the district, and shall be forthwith spread and extended upon the tax rolls for the current year, and the taxes so levied and extended shall be collected in the manner provided by law for the collection of general taxes. [1965 ex.s. c 22 § 2; 1925 c 29 § 2; RRS § 9692-2.]

Collection of taxes, generally: Chapter 84.56 RCW.

53.36.090 Revenue bonds for national defense. See chapter 53.39 RCW.

53.36.100 Levy for industrial development district purposes—Fund for future use. A port district having adopted a comprehensive scheme of harbor improvements and industrial developments may thereafter raise revenue, for six successive years only, in addition to all other revenues now authorized by law, by an annual levy not to exceed forty-five cents per thousand dollars of assessed value against the assessed valuation of the taxable property in such port district. Said levy shall be used exclusively for the exercise of the powers granted to port districts under chapter 53.25 RCW except as provided in RCW 53.36.110. The levy of such taxes is herein authorized notwithstanding the provisions of RCW 84.52.050 and 84.52.043. The revenues derived from levies made under RCW 53.36.100 and 53.36.110 not expended in the year in which the levies are made may be paid into a fund for future use in carrying out the powers granted under chapter 53.25 RCW, which fund may be accumulated and carried over from year to year, with the right to continue to levy the taxes provided for in RCW 53.36.100 and 53.36.110 for the purposes herein authorized. [1973 1st ex.s c 195 § 58; 1957 c 265 § 1.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

53.36.110 Levy for industrial development district purposes—Excess funds to be used solely for retirement of general obligations. In the event the levy herein authorized shall produce revenue in excess of the requirements to complete the projects of a port district then provided for in its comprehensive scheme of harbor improvements and industrial developments or amendments thereto, said excess shall be used solely for the retirement of general obligation bonded indebtedness. [1957 c 265 § 2.]

53.36.120 Expenditures for industrial development, trade promotion or promotional hosting—Budgeting required. Under the authority of Article VIII, section 8, of the state Constitution, port district expenditures for industrial development, trade promotion or promotional hosting shall be pursuant to specific budget items as approved by the port commission at the annual public hearings on the port district budget. [1967 c 136 § 1.]

53.36.130 Expenditures for industrial development, trade promotion or promotional hosting—Source and amount of funds. Funds for promotional hosting expenditures shall be expended only from gross operating revenues and shall not exceed one percent thereof upon the first two million five hundred thousand dollars of such gross operating revenues, one-half of one percent upon the next two million five hundred thousand dollars of such gross operating revenues, and one-fourth of one percent on the excess over five million dollars of such operating revenues: *Provided, however,* That in no case shall these limitations restrict a port district to less than twenty-five hundred dollars per year from any funds available to the port. [1967 c 136 § 2.]

53.36.140 Expenditures for industrial development, trade promotion or promotional hosting—Rules and regulations—Authorizations—Vouchers. Port commissions shall adopt, in writing, rules and regulations governing promotional hosting expenditures by port employees or agents. Such rules shall identify officials and agents authorized to make such expenditures and the approved objectives of such spending. Port commissioners shall not personally make such expenditures, or seek reimbursement therefor, except where specific authorization of such expenditures has been approved by the port commission. All payments and reimbursements shall be identified and supported on vouchers approved by the port auditor. [1967 c 136 § 3.]

53.36.150 Expenditures for industrial development, trade promotion or promotional hosting—Duties of state auditor. The state auditor shall, as provided in chapter 43.09 RCW:

(1) Audit expenditures made pursuant to RCW 53.36.120 through 53.36.150; and

(2) Promulgate appropriate rules and definitions as a part of the uniform system of accounts for port districts to carry out the intent of RCW 53.36.120 through 53.36.150: *Provided,* That such accounts shall continue to include "gross operating revenues" which shall be exclusive of revenues derived from any property tax levy except as provided in RCW 53.36.130. [1967 c 136 § 4.]

Chapter 53.39

NATIONAL EMERGENCY REVENUE BONDS

| | |
|-----------|--|
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| 53.39.930 | Effective date—1941 c 218. |

53.39.010 Preamble—Duration of powers granted. The unsettled state of world conditions has made it necessary for the government of the United States of America to enter into a vast extension of its defense program and to proceed with that program with all possible speed. The federal government has requested the assistance of state governments and of municipal corporations in this program. The port districts of the state of Washington having control of large harbor and real estate areas, the use and improvement of which are in some cases deemed by the federal government imperative to national defense purposes, it is necessary, in order that port districts may respond without delay to requests of the federal government for facilities necessary to this program, that the port districts and the port commissions thereof be given the necessary authority to assist in this program. The powers and authority herein granted, insofar as the construction of improvements and the original issuance of bonds for the financing thereof are concerned, shall be for the duration of the present emergency only. [1941 c 218 § 1; Rem. Supp. 1941 § 9718-1.]

53.39.020 Powers—National defense program. Port districts shall have the power, in the promulgation of the national defense program, to construct on property owned or controlled by the port district, piers, wharves, docks, boat landings, terminals, warehouses, storehouses, bunkers, oil tanks, and other harbor improvements, rail, transfer and terminal facilities, and to acquire such machinery, equipment and other facilities, as may be necessary or convenient to the successful operation of the same, included in the cost of which shall be the preparation of sites, grading of lands and dredging of waterways, all of which shall hereinafter be referred to as "improvements", upon the finding by the port commission that such construction is necessary to the national defense program, without the adoption of a comprehensive scheme for harbor improvement and regardless of any comprehensive scheme which may previously have been adopted; and for said purposes to contract indebtedness and issue revenue bonds evidencing said indebtedness, in conformity with this chapter, without further authorization or approval and without regard to existing statutory provisions, requirements and limitations. [1941 c 218 § 2; Rem. Supp. 1941 § 9718-2.]

53.39.030 Revenue bonds—Resolution. All revenue bonds authorized under the terms of this chapter may be issued and sold by the port districts from time to time and in such amounts as may be deemed necessary in the judgment of the port commission, to provide sufficient funds for the construction or acquisition of any improvements, and to include in the cost of construction, engineering, inspection, accounting, fiscal and legal expenses, the cost of issuance of bonds, including engraving, printing and advertising, and other similar expenses, and to pay interest on outstanding bonds issued for the construction of the same during the period of actual construction and for six months after the

completion thereof, and the proceeds of such bond issue are hereby made available for such purposes. The port commission of the port districts shall determine the form, conditions and denominations of all such bonds, and shall determine the maturity dates which the bonds so to be sold shall bear and the interest rate thereon. It shall not be necessary that all bonds of the same authorized issue bear the same interest rate. Principal and interest of such bonds shall be payable at such place or places as may be fixed and determined by the port commission and said bonds may contain provisions for registration thereof as to principal only, and as to both principal and interest. Said bonds shall be issued in coupon form with interest payable at such times as may be determined by the port commission and in such amounts as the said port commission may prescribe. The port commission may provide for the retirement of said bonds at any time or times prior to their maturity, and in such manner and upon payment of such premiums as may be fixed and determined by the resolution of such commission providing for the issuance of such bonds and referred to therein. [1970 ex.s. c 56 § 72; 1969 ex.s. c 232 § 82; 1941 c 218 § 3; Rem. Supp. 1941 § 9718-3.]

Purpose—Effective date—1970 ex.s. c 56: See notes following RCW 39.44.030.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.44.030

53.39.040 Sale of bonds. Port districts may, but shall not be required by the terms of this chapter, to sell any or all bonds issued under its provisions to the federal government or any agency of the federal government at private sale and without the necessity of public advertisement or calling for bids, but in no event shall the sale of said bonds be permitted for less than the principal and accrued interest thereon. Sales to others than the federal government or its agencies shall be made in the manner provided by law for the sale of other port district bonds. [1941 c 218 § 4; Rem. Supp. 1941 § 9718-4.]

Bonds sold to government at private sale: Chapter 39.48 RCW.

53.39.050 Payment of bonds—Revenue from improvements—Loans from general fund—Special fund—Temporary bonds—Trust indenture to secure bonds. Bonds issued under the provisions of this chapter shall be payable solely out of revenues received from the use of the improvements acquired and/or constructed from the proceeds of the sale of such bonds, from the proceeds of the sale or other disposition of said improvements, or from loans of general fund moneys of the port districts not otherwise appropriated. Such loans shall be only made after a resolution by the port district providing for the repayment of said loans from said revenues or said proceeds. Moneys received by any port district from the sale or condemnation of property constructed or acquired by the issuance of revenue bonds under the authority of this chapter shall be used solely for the payment of the principal of and interest on the revenue bonds issued to pay the cost of construction or acquiring such property to the extent

necessary to pay such principal and interest in full. Said bonds may be authorized by resolution adopted by the port commission of such port district. Such resolution or the trust indenture authorized by such resolution to secure such bonds as hereinafter provided, or both such resolution and trust indenture, shall provide for the creation of a special fund or funds into which fund or funds the port commission may obligate and bind such port district to set aside and pay a fixed proportion of the gross revenues received from the use of said improvements, or any fixed amount out of and not exceeding a fixed proportion of such revenue, or a fixed amount without regard to any fixed proportion, which fund or funds shall be drawn upon solely for the purpose of paying the principal and interest upon the bonds issued pursuant to this chapter. Such bonds shall be negotiable instruments under the law merchant even though they shall be payable solely from such special fund or funds and shall never be deemed a charge upon the tax revenues of such port district. Such bonds shall state upon their face that they are payable from such special fund or funds. Should the corporate authorities of any port district fail to set aside and pay into such fund or funds the payments provided for in such resolution or the trust indenture authorized by such resolution to secure such bonds as hereinafter provided, or in both such resolution and trust indenture, the holder of any such bonds may bring suit to compel compliance with the terms of such resolution or trust indenture, or both. Pending the preparation and execution of such bonds, temporary bonds may be issued in such form as the port commission of the port district may elect.

In the discretion of the port commission of any such port district, such bonds may be secured by a trust indenture, including indentures supplemental thereto, by and between such port district and a trustee, which shall be any trust company or bank having the powers of a trust company within or outside of the state.

Such trust indenture may appoint a depository and trustee to receive and disburse in the place and stead of the county treasurer, ex officio treasurer of such port district, notwithstanding any other provision of the law to the contrary, all moneys received and to be received by said port district as the proceeds of sale of such bonds, and from the ownership, operation, sale, lease or other use or disposition of the improvements acquired from the proceeds of the sale of such bonds; and may pledge or assign to such depository and trustee revenues to be received from the use of the improvements acquired and/or constructed from the proceeds of the sale of such bonds, and may pledge or assign moneys received as the proceeds of the sale, leasing or other disposition of said improvements, but shall not convey or mortgage such improvements or any part thereof. Either the resolution providing for the issuance of such bonds or such trust indenture or both, may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the port district in relation to the construction, acquisition, betterment, maintenance, operation, repair and insurance of the improvements, and

the custody, safeguarding and application of all moneys, and may also provide that such improvements shall be constructed and/or acquired and paid for under the supervision and approval of engineers employed or designated by the port commission of any such port district and satisfactory to the original purchasers of the bonds issued therefor, and may also require that security given by contractors and by any depository and trustee of the proceeds of the bonds or revenues from the use of such improvements or other disposition thereof or any moneys pertaining thereto, be satisfactory to such purchasers. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and trustee and to furnish such indemnifying bonds or to pledge such securities as may be required by such port commission.

The reconstruction finance corporation or any other agency of the United States government making any such loan, or any other holder or owner of any bonds authorized by and issued pursuant to the provisions of this chapter shall not be required to see to the application of the moneys derived from such bonds to the purposes for which said bonds are issued as specified in any resolution or indenture, or both, authorizing the issuance thereof. [1947 c 62 § 1; 1943 c 33 § 1; 1941 c 218 § 5; Rem. Supp. 1947 § 9718-5.]

53.39.060 Contents of resolution or trust indenture—Covenants. Any resolution or trust indenture authorizing the issuance of bonds pursuant to the provisions of this chapter, or both, may set forth the rights and remedies of the bondholders and of the depository and trustee, and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing such resolution or trust indenture or both may contain such other provisions as the port commission of such port district may deem reasonable and proper, not in violation of law, for the security of the bondholders, which provisions may be those specifically described and authorized elsewhere in this chapter to be contained in the resolution authorizing issuance of such bonds, or may be other similar provisions customarily contained in trust indentures for the security of bondholders.

Without limiting the generality of the foregoing, any such resolution or indenture, or both, may contain covenants as to:

(1) The creation of a special fund or funds into which the proceeds of bonds issued pursuant to this chapter shall be deposited and the terms and conditions upon which payments may be made from said funds, and for the payment of interest on bonds issued pursuant hereto from the moneys in said funds;

(2) Maintaining rents, rates and charges for the use of the improvements constructed or acquired from the proceeds of such bonds and services rendered in connection therewith sufficient at all times to provide revenues to pay the interest of and principal on all bonds and other obligations payable from said revenues, and to meet all other payments from said revenues pursuant to, or as provided in, any resolution or indenture, or

both, adopted or entered into in connection with the issuance of bonds under this chapter, and to pay the operating and maintenance costs of such improvements;

(3) Limitations upon the power of the port commission or other governing body of any such port district, or any other corporate authorities thereof, to divert the revenues derived from the operation, sale or lease or other disposition of any such improvements to any other purposes than the payment of the principal of and interest on all bonds payable from said revenues, and other payments from said revenues pursuant to, or as provided in, any resolution or indenture, or both, adopted or entered into in connection with the issuance of bonds under this chapter, and the payment of operating and maintenance costs of such improvements, and requiring the application of surplus revenues over and above said payments to the retirement of bonds or other obligations constituting a charge on said revenues as provided in such resolution or trust indenture, or both;

(4) The collection, depositing, custody and disbursement of the revenues of any such improvements, in the place and stead of the county treasurer, ex officio treasurer of such port district, notwithstanding any other provision of law to the contrary, including a specification of a depository and trustee designated to hold such deposits and granting to such depository and trustee, or other banks or trust companies authority to act as fiscal agent of any such port district for the custody of the proceeds of bonds and the moneys held in any fund created pursuant to said chapter or any such resolution or indenture, or both, authorizing such bonds, and to represent the holders of such bonds in the event of a default on such bonds or in the event of a default in the performance of any duty or obligation of such port district, or the corporate authorities thereof, in connection therewith, with such power and duty as such resolution or indenture, or both, may provide;

(5) The preparation of an annual budget and of monthly budgets for the operation, maintenance, renewal and replacement of said improvements, and the manner in which such budgets will be prepared and adopted, including the holding of public hearings thereon and limiting the authority to incur indebtedness or make expenditures in excess of such budgets;

(6) The creation and administration of reserve and other funds for the payment of all indebtedness payable from the revenues of said improvements at or prior to maturity, and for the creation of working funds, depreciation funds, renewal funds, replacement funds, reserves for extraordinary repairs and any other fund deemed necessary or desirable to insure the continued profitable operation of said improvements;

(7) The deposit of collateral security or indemnity bonds to secure the proceeds of all bonds issued pursuant to this chapter, and of all revenues of any such improvements and all moneys deposited in any special fund created under the authority of this chapter, or any covenant hereunder;

(8) The obligation of any such port district to maintain such improvements in good condition and to operate same in an economical and efficient manner;

(9) The amount and kind of insurance to be carried by any such port district in connection with such improvements, and the equipment and properties thereof, the companies in which such insurance shall be carried and the term thereof, and the application of the proceeds of any such insurance, and all adjustments of losses, under any policy of insurance carried on such improvements;

(10) Limitations upon the amount of additional bonds, warrants, or other obligations payable from the revenues of such improvements which may be issued thereafter, and the terms and conditions upon which such additional bonds, warrants or other obligations may be issued;

(11) Limitations upon the creation of additional liens or encumbrances on the real or personal property of any such improvements;

(12) The terms and conditions upon which the improvements, or any part thereof, may be purchased, acquired, sold, mortgaged, leased or otherwise disposed of, and the use or other disposition of the proceeds of any such sale, mortgage or lease;

(13) The operation, maintenance, management, accounting and auditing, and the keeping of records, reports and audits of any such improvements and the publication of same;

(14) The appointment, powers and duties of a receiver in the event of a default in the payment of the principal of or interest on any bonds issued pursuant to this chapter, or in the event of a default in the performance of any duty or obligation of any such port district or the corporate authorities thereof, in connection therewith, such receiver to be appointed as a matter of right upon application to any court of competent jurisdiction at the instance of a holder or owner, or holders or owners, of any such bonds;

(15) The amendment or modification of any resolution or indenture or both authorizing the issuance of any bonds hereunder, and the terms and conditions, and the amount or percentage of assenting bonds necessary to effectuate such amendment or modification;

(16) Limitations on the use of the improvements or services rendered in connection therewith without payment therefor, restrictions upon the diversion of business or the giving or permitting of preferential treatment in rates or service or otherwise to other port facilities of such district, in competition with, or to the detriment of, the improvements constructed and/or acquired under this chapter, and obligations of the district as to the requiring of prior or preferential use of the improvements constructed and/or acquired under this chapter; and

(17) Such other covenants as may be deemed necessary or desirable to insure a successful and profitable operation of any such improvements.

The port commission of any such port district shall have full and complete authority to fix rents, rates and charges for the use and occupation of, and any services rendered in connection with, any such improvements.

All expenses incurred in carrying out such trust indenture may be treated as a part of cost of operation, maintenance and repair of said improvements.

Any provision required or permitted to be contained in the resolution authorizing issuance of such revenue bonds hereunder may also or instead be contained in such trust indenture, and the execution of any such trust indenture shall be authorized by the resolution authorizing issuance of the bonds, which resolution may authorize issuance of the bonds pursuant to the terms of such trust indenture. The bonds issued pursuant to the terms of such trust indenture and secured thereby may be made payable at the office of the trustee and/or such other place or places within or outside the state as the trust indenture may provide, and all funds held by the trustee shall be held in trust solely for the purposes designated in such trust indenture. [1943 c 33 § 2; Rem. Supp. 1943 § 9718-5a.]

53.39.070 Funding and refunding of bonds—Invalidity no defense to collection of bonds authorized. Any such port district may from time to time refund any bonds authorized by and issued pursuant to this chapter by the issuance of new bonds as herein provided, whether the bonds to be refunded have or have not matured and may issue bonds to refund matured coupons evidencing interest upon any such bonds so refunded. Any such port district may issue bonds partly to refund bonds and matured coupons as above provided, and partly for any other purposes in connection with the construction, betterment, operation and maintenance of such improvements. No defense of invalidity, or irregularity in any such bonds funded or refunded by the issuance of bonds hereunder shall be a valid defense in any action at law or equity for a judgment upon or for the enforcement or collection of any bonds authorized by and issued pursuant to this chapter, and no court shall have jurisdiction to entertain any such defense in any such action or proceeding. [1943 c 33 § 3; 1941 c 218 § 6; Rem. Supp. 1943 § 9718-6.]

53.39.080 Protection of bondholders—Resolution or trust indenture as contract. Any resolution authorizing the issuance of bonds pursuant to the provisions of this chapter may contain covenants of any such port district to protect and safeguard the security and rights of the holders of any such bonds, and such other covenants not inconsistent with the other provisions of this chapter which will increase the marketability of such bonds. The provisions of this chapter and of any such resolution and of any trust indenture entered into pursuant to RCW 53.39.050, shall constitute a contract with the holders of such bonds and the provisions thereof shall be enforceable by any owner or holder of such bonds by mandamus or any other appropriate suit, action or proceeding at law or in equity in any court of competent jurisdiction. [1943 c 33 § 4; 1941 c 218 § 7; Rem. Supp. 1943 § 9718-7.]

53.39.900 Construction—1941 c 218. This chapter shall be complete authority for the issuance of the bonds hereby authorized, and shall be liberally construed to accomplish its purposes. Any restrictions, limitations or regulations relative to the issuance of such bonds contained in any other act shall not apply to the

bonds issued under this chapter. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purposes of this chapter only. [1941 c 218 § 8; Rem. Supp. 1941 § 9718-8.]

53.39.910 Prior acts validated. Any proceedings which have heretofore been taken by any port district and any contracts which have heretofore been entered into by such port district, including contracts entered into through issuance of revenue bonds or through the execution of any trust indenture to secure such bonds, which proceedings or contracts are authorized under the provisions of this chapter, shall be regarded as having been taken or entered into under the authority of this chapter, notwithstanding the fact that such proceedings may have been taken or such contracts may have been entered into prior to the enactment hereof, and such proceedings and such contracts are hereby validated, ratified and confirmed. [1943 c 33 § 5; Rem. Supp. 1943 § 9718-8a.]

53.39.920 Severability—1943 c 33. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. [1943 c 33 § 6; Rem. Supp. 1943 § 9718-8b.]

53.39.930 Effective date—1941 c 218. This chapter is necessary for the preservation of the public peace and safety, to national defense, and the support of the state government and its existing institutions, and shall take effect immediately. [1941 c 218 § 9; no RRS.]

Effective date—1943 c 33: "This act is necessary for the immediate preservation of the public peace and safety and for the support of the state government and its existing public institutions, and shall take effect immediately." [1943 c 33 § 7.]

**Chapter 53.40
REVENUE BONDS AND WARRANTS**

| | |
|-----------|---|
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| 53.40.140 | Construction of chapter. |
| 53.40.150 | Validation—1959 c 183. |

53.40.010 Revenue bonds authorized. The port commission of any port district is authorized for the purpose of carrying out the lawful powers granted port districts by the laws of the state to contract indebtedness and to issue revenue bonds evidencing such indebtedness in conformity with this chapter. [1959 c 183

§ 1; 1957 c 59 § 1; 1949 c 122 § 1; Rem. Supp. 1949 § 9711-1.]

Declaratory judgments of local bond issues: Chapter 7.25 RCW.

53.40.020 Purposes for which bonds may be issued and sold. All such revenue bonds authorized under the terms of this chapter may be issued and sold by the port district from time to time and in such amounts as is deemed necessary by the port commission to provide sufficient funds for the carrying out of all port district powers, and without limiting the generality thereof, shall include the following: Acquisition, construction, reconstruction, maintenance, repair, additions and operation of port properties and facilities, including in the cost thereof engineering, inspection, accounting, fiscal and legal expenses; the cost of issuance of bonds, including printing, engraving and advertising and other similar expenses; payment of interest on the outstanding bonds issued for any project during the period of actual construction and for six months after the completion thereof, and the proceeds of such bond issue are hereby made available for all such purposes. [1959 c 183 § 2; 1957 c 59 § 3. Prior: 1949 c 122 § 2, part; Rem. Supp. 1949 § 9711-2, part.]

53.40.030 Bonds—Term, form, etc. The port commission shall determine the form, conditions, and denominations of all such bonds, the maturity date or dates which the bonds so sold shall bear, and the interest rate thereon. It shall not be necessary that all bonds of the same authorized issue bear the same interest rate. Principal and interest of the bonds shall be payable at such place or places as may be fixed and determined by the port commission. The bonds may contain provisions for registration thereof as to principal only or as to both principal and interest. The bonds shall be issued in coupon form with interest payable at such time or times as may be determined by the port commission and in such amounts as it may prescribe. The port commission may provide for retirement of bonds issued under this chapter at any time or times prior to their maturity, and in such manner and upon the payment of such premiums as may be fixed and determined by resolution of the port commission. [1970 ex.s. c 56 § 73; 1969 ex.s. c 232 § 37; 1959 c 183 § 3; 1957 c 59 § 4. Prior: 1949 c 122 § 2, part; Rem. Supp. 1949 § 9711-2, part.]

Purpose—Effective date—1970 ex.s. c 56: See notes following RCW 39.44.030.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.44.030.

Bonds—Form, terms of sale, payment: Chapter 39.44 RCW.

53.40.040 Bonds payable solely out of revenues—Special funds. Bonds issued under the provisions of this chapter shall be payable solely out of operating revenues of the port district. Such bonds shall be authorized by resolution adopted by the port commission, which resolution shall create a special fund or funds into which the port commission may obligate and bind the port district to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the gross revenue of the port district for the purpose of

paying the principal of and interest on such bonds as the same shall become due, and if deemed necessary to maintain adequate reserves therefor. Such fund or funds shall be drawn upon solely for the purpose of paying the principal and interest upon the bonds issued pursuant to this chapter.

The bonds shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state, even though they shall be payable solely from such special fund or funds, and the tax revenue of the port district may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. The bonds and the coupons attached thereto shall state upon their face that they are payable solely from such special fund or funds. If the port commission fails to set aside and pay into such fund or funds the payments provided for in such resolution, the holder of any such bonds may bring suit to compel compliance with the provisions of the resolution. [1959 c 183 § 4; 1957 c 59 § 5; 1949 c 122 § 4; Rem. Supp. 1949 § 9711-4.]

Negotiable instruments: Title 62A RCW.

53.40.050 Sale of bonds to federal government. Port districts may, but are not required by the terms of this chapter to do so, sell any or all such bonds issued pursuant to this chapter to the federal government, or any agency of the federal government, at private sale and without the necessity of public advertisement or calling for bids. [1959 c 183 § 5; 1957 c 59 § 6; 1949 c 122 § 3; Rem. Supp. 1949 § 9711-3.]

Bonds sold to government at private sale: Chapter 39.48 RCW.

53.40.110 Interest, signatures, sale of bonds—Covenants—Safeguards—Enforcement. The bonds issued pursuant to the provisions of this chapter shall bear interest at such rate or rates as authorized by the port commission; shall be signed on behalf of the port district by the president of the port commission and shall be attested by the secretary of the port commission, one of which signatures may be a facsimile signature, and shall have the seal of the port district impressed thereon; each of the interest coupons attached thereto shall be signed by the facsimile signatures of said officials. Such bonds shall be sold in the manner and at such price as the port commission shall deem best, either at public or private sale.

The port commission may provide such covenants as it may deem necessary to secure the payment of the principal of and interest on such bonds and may but shall not be required to include covenants to create a reserve fund or account and to authorize the payment or deposit of certain moneys therein for the purpose of securing the payment of such principal and interest; to establish, maintain, and collect tariffs, rates, charges, fees, rentals, and sales prices on facilities and services the income of which is pledged for the payment of such bonds, sufficient to pay or secure the payment of such principal and interest and to maintain an adequate coverage over annual debt service; and to make any

and all other covenants not inconsistent with the provisions of this chapter which will increase the marketability of such bonds. The port commission may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with any revenue bonds being issued and sold. The provisions of this chapter and any resolution or resolutions providing for the authorization, issuance, and sale of such bonds shall constitute a contract with the holders of such bonds, and the provisions thereof shall be enforceable by any owner or holder of such bonds by mandamus or any appropriate suit, action or proceeding at law or in equity in any court of competent jurisdiction. [1970 ex.s. c 56 § 74; 1969 ex.s. c 232 § 38; 1959 c 183 § 6; 1949 c 122 § 9; Rem. Supp. 1949 § 9711-8.]

Purpose—Effective date—1970 ex.s. c 56: See notes following RCW 39.44.030.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.44.030.

Mandamus: Chapter 7.16 RCW.

53.40.120 Irregularity in bonds or use of funds no defense. The Reconstruction Finance Corporation, or any other agency of the United States government making any such loan, or any other holder or owner of any bonds issued pursuant to this chapter, shall not be required to see to the application of the moneys derived from such bonds to the purposes for which the bonds are issued as specified in any resolution authorizing the issuance thereof. No defense of invalidity, or irregularity in any such bonds funded or refunded by the issuance of bonds hereunder, shall be a valid defense in any action at law or equity for a judgment upon or for the enforcement or collection of any bonds issued pursuant to this chapter, and no court shall have jurisdiction to entertain any such defense in any such action or proceeding. [1957 c 59 § 10. Prior: 1949 c 122 § 7, part; Rem. Supp. 1949 § 9711-6, part.]

53.40.130 Funding, refunding bonds. The port commission of any port district may by resolution, from time to time, provide for the issuance of funding or refunding revenue bonds to fund or refund any outstanding revenue warrants, bonds, and any premiums due thereon, and matured coupons evidencing interest upon any such bonds at or before the maturity of such warrants or bonds, and may combine various outstanding revenue warrants and parts or all of various series and issues of outstanding revenue bonds and matured coupons in the amount thereof to be funded or refunded.

The port commission shall create a special fund for the sole purpose of paying the principal of and interest on such funding or refunding revenue bonds, into which fund the commission shall obligate and bind the port district to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the gross revenue of the port district sufficient to pay such principal and interest as the same shall become due, and if deemed necessary to maintain adequate reserves therefor.

Such funding or refunding bonds shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state, and the tax revenue of the port district may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds.

The port district may exchange such funding or refunding bonds for the warrants, bonds, and coupons being funded or refunded, or it may sell such funding or refunding bonds in the manner, at such rate or rates of interest and at such price as the port commission shall deem to be for the best interest of the district and its inhabitants, either at public or private sale.

The provisions of this chapter relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such funding or refunding bonds except as may be otherwise specifically provided in this section. [1970 ex.s. c 56 § 75; 1969 ex.s. c 232 § 39; 1959 c 183 § 7; 1949 c 122 § 8; Rem. Supp. 1949 § 9711-7.]

Purpose—Effective date—1970 ex.s. c 56: See notes following RCW 39.44.030.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.44.030.

53.40.135 Revenue warrants. Port districts may also issue revenue warrants for the same purposes for which they may issue revenue bonds, and the provisions of this chapter relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such revenue warrants. [1959 c 183 § 8.]

53.40.140 Construction of chapter. This chapter shall be complete authority for the issuance of the bonds and warrants hereby authorized, and shall be liberally construed to accomplish its purposes. Any restrictions, limitations or regulations relative to the issuance of such bonds or warrants contained in any other act shall not apply to the bonds or warrants issued under this chapter. Any act inconsistent herewith shall be deemed modified to conform with the provisions of this chapter for the purpose of this chapter only. [1949 c 122 § 10; Rem. Supp. 1949 § 9711-9.]

53.40.150 Validation—1959 c 183. Any sale of revenue bonds or warrants of port districts heretofore made, whether at public or private sale and whether at par or less than par as authorized herein, and any terms, conditions, and covenants of any revenue bonds or warrants of port districts heretofore issued, are hereby declared to be valid, legal, and binding in all respects: *Provided, however,* That this section shall not be construed to exonerate any officer or agent of any such district from any liability for any acts which were committed fraudulently or in bad faith. [1959 c 183 § 9.]

Chapter 53.43

VALIDATION OF INDEBTEDNESS IN CERTAIN DISTRICTS—FUNDING OR REFUNDING INDEBTEDNESS—1941 ACT.

Sections

- 53.43.010 Validation without popular vote—Resolution.
 53.43.020 Funding or refunding indebtedness—Issuance of bonds—Election.
 53.43.030 Requisites of bonds—Maturity—Redemption.
 53.43.040 Interest on bonds—Form and execution—Issuance by sale or exchange—Limitation of amount.
 53.43.050 Validation by vote—Effect.
 53.43.060 Bond election for funding or refunding indebtedness—Vote required.
 53.43.070 Application of chapter.

53.43.010 Validation without popular vote—Resolution. Any indebtedness heretofore contracted by the board of commissioners of any port district of the state of Washington having an assessed valuation of less than three million dollars without an election authorizing the same, for and on behalf of the port district for port district purposes, in any amount (together with all other port district indebtedness, contracted by the board of commissioners without an election authorizing the same, existing as of the date or dates of the contracting of the indebtedness first referred to herein) not in excess of one and one-half percent of the value of the taxable property therein but exceeding (together with the said other and additional indebtedness above referred to) the amount of indebtedness permitted to be incurred by port districts without an election authorizing the same under the statutes of Washington, is hereby validated: *Provided*, That before any such validation shall become effectual as to any specific indebtedness of any such port district, the board of commissioners thereof shall investigate the incurring of all such indebtedness and the issuance of the bonds, warrants, or other instruments evidencing such indebtedness, and shall be required to find, determine, and declare therefrom, by and in a resolution adopted by said board, that the indebtedness in question has been contracted and incurred for port district purposes and that such indebtedness constitutes a proper and equitable charge against such port district, and that it constitutes the valid indebtedness of the port district; whereupon such indebtedness shall be the valid and legal indebtedness of such port district. [1941 c 7 § 1; Rem. Supp. 1941 § 9692A-1. Formerly RCW 53.44.060.]

53.43.020 Funding or refunding indebtedness—Issuance of bonds—Election. The board of commissioners of any port district of the state of Washington shall have the right and power to fund or to refund any of its outstanding indebtedness and accrued interest thereon, including any indebtedness which shall be validated hereunder, by the issuance of funding or refunding bonds, whenever, in the judgment of the board by resolution thereof duly adopted and declared, it shall have been found, determined, and declared by said board that the proposed funding or refunding of such indebtedness will inure to the benefit and credit of the port district and that such funding or refunding will result in a reduction of the indebtedness amount or in the rate of

interest borne thereby: *Provided, however*, That no bonds for such funding or refunding shall be issued until authorized by a majority vote of the voters of such port district, voting at a general or special election called therefor (which shall be held as other elections are held within port districts). [1941 c 7 § 2; Rem. Supp. 1941 § 9692A-2.]

53.43.030 Requisites of bonds—Maturity—Redemption. Such funding or refunding bonds shall be the general bonds of the district issuing the same, payable out of and from annual taxes upon all the taxable property within the port district levied and collected as are other port district taxes. Such bonds shall run for a period of not exceeding twenty years from date thereof, and shall mature and be payable on the amortization plan prescribed by RCW 39.44.010: *Provided, however*, That any such bonds may be issued to mature commencing at the end of the first year after date thereof, and the foregoing amortization plan may be departed from when, in view of other taxation and financial burdens of any such port district, it shall be to the advantage of the port district and of the owners of the property therein, in the judgment of the board of commissioners thereof, to depart from such amortization plan; and said bonds or any part thereof maturing on or after ten years from date thereof may be made redeemable on any interest payment date prior to their dates of fixed maturity, at the option of the port district, upon such prior notice thereof as shall be determined by resolution of said board and as expressed upon the face of the bonds thus subjected to the right of prior redemption. The board of commissioners shall have the right to apply to the payment of said bonds and to the prior redemption thereof any other moneys or funds belonging to said port district which are legally available for such purpose. [1941 c 7 § 3; Rem. Supp. 1941 § 9692A-3.]

53.43.040 Interest on bonds—Form and execution—Issuance by sale or exchange—Limitation of amount. Such funding or refunding bonds shall bear interest at a rate not in excess of five percent per annum as may be fixed by the board after the sale of said bonds, or, in the event of the issuance thereof by exchange, prior to such exchange; and the form of said bonds and interest coupons which shall be attached thereto, their execution, and said bonds in all other respects, shall be as permitted by law and as provided by resolution of said board. Funding or refunding bonds may be issued by way of sale, or by exchange of such funding or refunding bonds for the warrants, bonds, or other instruments evidencing the indebtedness thus to be funded or refunded: *Provided*, That such funding or refunding bonds thus issued after sale thereof, or by exchange thereof, shall not exceed, in principal amount, the principal and interest of the indebtedness thereby funded or refunded, and the funding or refunding bonds shall bear a lower rate of interest than the rate of interest borne by the indebtedness funded or refunded thereby and not in excess of five percent per annum. [1941 c 7 § 4; Rem. Supp. 1941 § 9692A-4.]

Form and interest: Chapter 39.44 RCW.

53.43.050 Validation by vote—Effect. Port district indebtedness heretofore incurred by any port district of the state of Washington having an assessed valuation of less than three million dollars in an amount in excess of one and one-half percent of the value of the taxable property within any such port district but not exceeding five percent of such value, may be validated by a vote of three-fifths of the voters of such port district, voting on the proposition of the validation of such indebtedness and assenting thereto at a general or special election held within such port district (as other elections are held within port districts), at which election the proposition of such validation shall be submitted; and thereupon any such indebtedness thus validated, or any other valid indebtedness of the port district, may be funded or refunded, under the provisions of this chapter, subject to all the foregoing requirements affecting funding and refunding bonds. [1941 c 7 § 5; Rem. Supp. 1941 § 9692A-5. Formerly RCW 53.44.050, part.]

53.43.060 Bond election for funding or refunding indebtedness—Vote required. A special election for the submission of any proposition of issuing bonds for funding or refunding such indebtedness or of indebtedness validation may be held at any time fixed by the board of commissioners and any special or general election held under the provisions of this chapter shall be ordered and called and notice thereof given and said election in all other respects had as provided by existing law. If, at said election, the validation of any such indebtedness shall be assented to by three-fifths of the voters within said port district voting at any such election, said indebtedness shall be and become a valid indebtedness of the port district. [1941 c 7 § 6; Rem. Supp. 1941 § 9692A-6. Formerly RCW 53.44.050, part.]

Elections: Title 29 RCW.

53.43.070 Application of chapter. This chapter shall not apply to any indebtedness incurred by any port district after the effective date of this chapter. [1941 c 7 § 7; Rem. Supp. 1941 § 9692A-7. Formerly RCW 53.44.050, part.]

Reviser's note: Effective date of this chapter is midnight June 11, 1941, see preface 1941 session laws.

Chapter 53.44 FUNDING AND REFUNDING INDEBTEDNESS—1947 ACT

Sections

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| 53.44.010 | Funding and refunding authorized. |
| 53.44.020 | Rate of interest—Form and execution. |
| 53.44.030 | Maturities—Redemption—Payment. |
| 53.44.040 | Procedure for issuance. |

Funding and refunding revenue bonds: RCW 53.39.070 and 53.40.130.

Public bonds, form, terms of sale, payment, etc.: Chapter 39.44 RCW.

53.44.010 Funding and refunding authorized. The board of commissioners of any port district of the state may fund or refund any of the general bonded indebtedness and/or warrants of the district now or hereafter existing and accrued interest thereon, and may combine various series and/or issues of warrants and/or bonds into a single issue of funding or refunding bonds, by the issuance of general obligation funding or refunding bonds, when the board, by resolution, finds, determines, and declares that such proposed funding or refunding will inure to the benefit and credit of the district and will not result in an increase of the district's indebtedness or in an increase in the rate of interest borne by the indebtedness so funded or refunded. Such funding or refunding may be accomplished by the sale of said funding or refunding bonds or by their exchange for the bonds and/or warrants to be refunded. General obligation bonds of a port district which do not provide for prior redemption, may also be refunded with the consent of the holders thereof. [1947 c 239 § 1; Rem. Supp. 1947 § 5623-1.]

53.44.020 Rate of interest—Form and execution. Such funding or refunding bonds shall bear interest as fixed by the board after the sale of the bonds, or, in the event of the issuance thereof by exchange, prior to such exchange; and the form of the bonds and interest coupons which shall be attached thereto, their execution, and the bonds in all other respects, shall be as permitted by law and as provided by resolution of the board. [1970 ex.s. c 56 § 76; 1969 ex.s. c 232 § 91; 1947 c 239 § 2; Rem. Supp. 1947 § 5632-2.]

Purpose—Effective date—1970 ex.s. c 56: See notes following RCW 39.44.030.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.44.030.

Form and interest: Chapter 39.44 RCW.

53.44.030 Maturities—Redemption—Payment. Such funding or refunding bonds shall run for a period of not exceeding twenty years from date thereof, and shall mature and be payable on the amortization plan prescribed by RCW 39.44.010: *Provided*, That any such funding or refunding bonds may be issued to mature commencing at the end of the first year after date thereof, and the foregoing amortization plan may be departed from when, in view of other taxation and financial burdens of the district, it is to the advantage of the district and of the owners of the property therein, in the judgment of the board thereof, expressed in a written resolution, to depart from such amortization plan; and the funding or refunding bonds or any part thereof maturing on or after ten years from date thereof may be made redeemable on any interest payment date prior to their dates of fixed maturity, at the option of the district, upon such prior notice thereof as shall be determined by resolution of said board and as expressed upon the face of the bonds thus subjected to the right of prior redemption. The board may apply to the payment of the funding or refunding bonds and to the prior redemption thereof any other moneys or funds belonging

to the district which are legally available for such purpose. [1947 c 239 § 3; Rem. Supp. 1947 § 5623-3.]

53.44.040 Procedure for issuance. Said funding or refunding bonds and the issuance thereof shall be governed in all other respects by the provisions of chapter 39.44 RCW, insofar as applicable. [1947 c 239 § 4; Rem. Supp. 1947 § 5623-4.]

Chapter 53.46 CONSOLIDATION

Sections

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| 53.46.005 | Definitions. |
| 53.46.010 | Consolidation authorized—Petition or resolution, contents. |
| 53.46.020 | Special election, conduct—Declaration of candidacy, filing and withdrawal—Ballots. |
| 53.46.030 | Certification of election—Establishment as municipal corporation—Commissioners, terms. |
| 53.46.040 | Prior obligations—Powers of consolidated district—Separation of funds. |
| 53.46.050 | County commissioners may act if no active port commission. |
| 53.46.060 | Dissolution of district which has no active commission—Authority of county commissioners. |
| 53.46.070 | Title to property vests in consolidated district. |
| 53.46.080 | District including area from two or more counties—Procedure to determine proportion of taxes. |
| 53.46.090 | District including area from two or more counties—Levy and collection of taxes—Principal county treasurer, duties. |
| 53.46.100 | General powers of consolidated district—Debt limitation. |

53.46.005 Definitions. As used in this chapter the term "principal county auditor" and "principal county treasurer" shall be the county auditor or county treasurer in the county having the largest assessed valuation of the total of the proposed consolidated port district. [1965 c 102 § 1.]

53.46.010 Consolidation authorized—Petition or resolution, contents. Two or more port districts may be joined into one consolidated port district in the following manner: The port commissioners of each of the port districts proposed to be consolidated may, or on petition of ten percent of the qualified electors residing within each of the districts proposed to be consolidated based on the total vote cast in the last general election, shall, by joint resolution submit to the qualified electors of the port districts to be consolidated the proposition of consolidating such districts into one port district. Such resolution or petition in request thereof shall identify each port district to be consolidated, listing its assets and liabilities; state the name by which the port district resulting from the consolidation shall be known; legally describe each port commissioner district to be created within the port district resulting from the consolidation; state the terms and conditions, if any, under which the consolidation is proposed; and call a special election in the territory of the port districts to be consolidated, to determine whether such consolidation shall take place, and to fill the offices of the port commission of the port district resulting from the consolidation. The resolution or petition shall provide that the commission

in the proposed district shall consist of three, five, or seven commissioners and that the number shall be approved by the voters at the time the proposition for consolidation is voted upon. The proposition in this respect shall provide that the commissioners shall be elected one each from commissioner districts which shall be described as set forth in this section, or if such districts are not so described then the commissioners shall be elected at large. [1965 c 102 § 2; 1961 c 26 § 1.]

53.46.020 Special election, conduct—Declaration of candidacy, filing and withdrawal—Ballots. The special election to consider such consolidation and to fill such offices shall be conducted in accordance with the general election laws of the state. Each candidate for the port commission of the port district resulting from the consolidation shall, not more than forty-five nor less than thirty days prior to the election, file with the county auditor a declaration of candidacy for port commissioner from the port commissioner district in which he is a qualified voter. If the proposed consolidated district will lie in two or more counties, candidates shall file with the principal county auditor. The principal county auditor in such case shall be election officer, and the county auditors of other counties having area within such proposed port district shall cooperate by providing such books and records and assisting as may be required in carrying out such election and all subsequent elections in any such consolidated port district. Any candidate may withdraw his declaration at any time within five days after the last day allowed for filing declaration of candidacy. There shall be no fee charged for filing a declaration of candidacy for port commissioner at this election. All names of candidates to be voted upon shall be printed upon the ballot alphabetically by port commissioner districts. Names of candidates printed upon the ballot need not be rotated. [1965 c 102 § 3; 1961 c 26 § 2.]

53.46.030 Certification of election—Establishment as municipal corporation—Commissioners, terms. The county canvassing board of election returns shall certify the results of the election to the board of county commissioners; and if at such election a majority of voters voting on the question of consolidation in each port district to be consolidated shall vote in favor of consolidation, the board of county commissioners shall so declare, and the port district resulting from the consolidation shall then be and become a municipal corporation of the state of Washington. The county auditor shall in such event issue a certificate of election to the successful candidate from each port commissioner district. If the proposed district includes area in two or more counties, certificates of election shall be issued by the principal county auditor, and the canvassing board of elections shall be made up of the chairmen of the board of county commissioners, prosecutors, and the auditors of each county with area within the consolidated port district. Of the successful port commissioner candidates, if three are elected, the one receiving the highest number of votes shall serve until his successor is elected and qualified at the third subsequent regular

election for port commissioner, and the ones receiving the second and third highest numbers of votes shall serve until their successors are elected and qualified at the second and first subsequent regular elections for port commissioner, respectively. If five or seven commissioners are elected, the two with the greatest number of votes shall serve until their successors are elected and qualified at the third subsequent regular election of port commissioners, the two commissioners receiving the next highest number of votes shall serve until their successors are elected and qualified at the second subsequent regular election of port commissioners; and the remaining commissioner or commissioners shall serve until their successors are elected and qualified at the next regular election of port commissioners. [1965 c 102 § 4; 1961 c 26 § 3.]

53.46.040 Prior obligations—Powers of consolidated district—Separation of funds. None of the obligations of each port district which has been consolidated shall be affected by the consolidation, and taxes and assessments for payment of such obligations shall continue to be levied and collected in respect to property in such former port district notwithstanding the consolidation. The port commission of the port district resulting from the consolidation shall have all the powers possessed at the time of the consolidation by the port commission of each port district which has been consolidated, to levy or collect taxes or assessments in respect to property in such former port district, for payment of such obligations. While any such obligations remain outstanding, funds subject to such obligations shall be kept separate. [1961 c 26 § 4.]

53.46.050 County commissioners may act if no active port commission. In the event a port district does not have an active port commission to which the petition for consolidation may be directed, the board of county commissioners of the county wherein such inactive port district is located may act in the place and stead of the port commission for the purposes of consolidation. [1961 c 26 § 5.]

53.46.060 Dissolution of district which has no active commission—Authority of county commissioners. For the purpose of dissolution of any port district not having an active port commission the board of county commissioners of the county wherein such inactive port district is located may exercise the powers and duties vested by chapter 53.48 RCW in the governing body of such port district. [1961 c 26 § 6.]

53.46.070 Title to property vests in consolidated district. Upon consolidation of two or more port districts the title to all property owned by or held in trust for the former districts shall vest in the consolidated port district. [1965 c 102 § 5.]

53.46.080 District including area from two or more counties—Procedure to determine proportion of taxes. If the district includes area from two or more counties, it shall be the duty of the county assessor in each

county to certify annually to the auditor of his county, who shall forward the same to the principal county auditor, the total assessed valuation of that part of the port district which lies within his county. The port commission of such consolidated port district shall certify to the principal county auditor the budget and the levies to be assessed for port purposes: *Provided*, That the amount of tax to be levied upon taxable property of that part of a port district lying in one county shall be in such ratio to the whole amount levied upon the property lying in the entire consolidated port district as the assessed valuation lying in such county bears to the assessed valuation of the property in the entire consolidated port district.

Thereafter the principal county auditor shall forward a certificate to each county auditor, for the county commissioners thereof, which shall specify the proportion of taxes to be levied for port district purposes. [1965 c 102 § 6.]

53.46.090 District including area from two or more counties—Levy and collection of taxes—Principal county treasurer, duties. Upon receipt of the certificate from the principal county auditor as provided in RCW 53.46.080 it shall be the duty of the board of county commissioners of each county to levy on all taxable property of the consolidated port district which lies within the county a tax sufficient to raise the amount necessary to meet the county's proportionate share of the total tax levy. Such taxes shall be levied and collected in the same manner as other taxes are levied and collected. The proceeds shall be forwarded quarterly by the treasurer of each county to the principal county treasurer. The principal county treasurer shall place to the credit of said consolidated port district all funds received from the other county treasurers as well as those amounts he shall have collected for the account of the port district. The principal county treasurer shall be the treasurer of the consolidated port district and shall perform all functions required of a treasurer of a port district. [1965 c 102 § 7.]

53.46.100 General powers of consolidated district—Debt limitation. Any port district created by consolidation prior to the effective date of this amendatory act, or formed hereafter under this amendatory act, shall have all the powers of a newly formed port district, without any other restriction except the requirements of RCW 53.46.040: *Provided*, That general obligation indebtedness outstanding for all port purposes within the area of the consolidated port shall not exceed the limits of RCW 53.36.030, and for purpose of computing such bonded debt, the bonds outstanding of all port agencies shall be considered. [1965 c 102 § 8.]

Reviser's note: "this amendatory act" [1965 c 102] amended RCW 53.46.010, 53.46.020 and 53.46.030; added RCW 53.46.005, 53.46.070, 53.46.080, 53.46.090 and 53.46.100; and became effective June 10, 1965.

Chapter 53.47

DISSOLUTION OF INACTIVE PORT DISTRICTS

Sections

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| 53.47.010 | Purpose. |
| 53.47.020 | Port district deemed inactive, when. |
| 53.47.030 | Petition for dissolution—Filing—Contents. |
| 53.47.040 | Hearing on petition—Notice, publication—Creditor claims, determination—Terms and conditions of court order if district to be dissolved. |
| 53.47.050 | Effect of final order of dissolution. |
| 53.47.900 | Chapter cumulative and nonexclusive. |

53.47.010 Purpose. This chapter shall provide an additional method by which inactive port districts may be dissolved. [1971 ex.s. c 162 § 1.]

53.47.020 Port district deemed inactive, when. A port district shall be deemed inactive if, at the time of the filing of the petition for dissolution with the clerk of the superior court of the county in which such port district is situated, such port has failed to comply with subdivision (1), (2), or (3) of this section.

(1) The port district has failed to file its budget with the board of county commissioners or, in the case of home rule charters, the appropriate governing body for the two fiscal years immediately preceding the date of filing such petition, and the port district, having been in existence for two years or more, has failed to adopt its comprehensive plan of harbor improvement and/or industrial development as provided by statute, and does not presently own or has not leased within two years prior to the filing of such petition, real property for use for port purposes.

(2) The port district does not presently own or has not leased or owned real property for use for port purposes within the four calendar years prior to the filing of such petition.

(3) The port district has not filed its budget with the board of county commissioners or, in the case of home rule charters, the appropriate governing body for the two fiscal years immediately preceding the filing of said petition has not adopted its comprehensive plan of harbor improvement and/or industrial development as provided by statute, and has not met with a legal quorum at least twice in the last two calendar years prior to the filing of such petition. [1971 ex.s. c 162 § 2.]

53.47.030 Petition for dissolution—Filing—Contents. The county prosecutor of the county in which such port district is located acting upon his own motion shall file such petition for dissolution with the clerk of the superior court of the county in which such inactive port district is located. Such petition shall:

(1) Describe with certainty the port district which is declared to be inactive and which is sought to be dissolved;

(2) Allege with particularity that the port district sought to be dissolved is inactive within the purview of any of the several particulars set forth in RCW 53.47-.020; and

(3) Request that the court find the port district inactive and declare it dissolved upon such terms and conditions as the court may impose and declare. [1971 ex.s. c 162 § 3.]

53.47.040 Hearing on petition—Notice, publication—Creditor claims, determination—Terms and conditions of court order if district to be dissolved. The superior court, upon the filing of such petition, shall set such petition for hearing not less than one hundred twenty days and not more than one hundred eighty days after the date of filing said petition. Further, the court shall order the clerk of said court to give notice of the time and place fixed for the hearing by publication of notice in a newspaper of general circulation within such district, such publication to be once each week for three consecutive weeks, the date of first publication to be not less than thirty nor more than seventy days prior to the date fixed for the hearing upon such petition. Said notice shall further provide that all creditors of said district, including holders of revenue or general obligation bonds issued by said district, if any, shall present their claims to the clerk of said court within ninety days from the date of first publication of said notice, and that upon failure to do so all such claims will be forever barred. The clerk shall also mail a copy by ordinary mail of such notice to all creditors of said district, including holders of revenue or general obligation bonds issued by said district, if any, such mailing to be mailed not later than thirty days after the hearing date has been set. No other or further notices shall be required at any stage of the proceedings for dissolution of an inactive port district pursuant to this chapter.

The clerk, ten days prior to the date set for the hearing, shall deliver to the court the following:

(1) A list of the liabilities of the port district in detail with the names and addresses of creditors as then known; and

(2) A list of the assets of the port district in detail as then known.

The court upon hearing the petition shall fix and determine all such claims subject to proof being properly filed as provided in this section; shall fix and determine the financial condition of the district as to its assets and liabilities, and if it finds the port district to be inactive in respect of any standard of inactivity set forth by this chapter, shall order the port district to be dissolved upon the following terms and conditions:

(1) If there be no outstanding debts, or if the debts be less than the existing assets, the court shall appoint the auditor of the county in which the port district is located to be trustee of the port's assets and shall empower such person to wind up and liquidate the affairs of such district in such manner as the court shall provide and to file his accounting with the court within ninety days from the date of his appointment. Upon the filing of such account, the court shall fix a date for hearing upon the same and upon approval thereof, if such accounting be the final accounting, shall enter its order approving the same and declaring the port district dissolved.

At the request of the trustee the county sheriff may sell, at public auction, all real and personal property of the port district. The county sheriff shall cause a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale. Such notice shall contain a description of the property to be sold and shall be signed

by the sheriff or his deputy. Such notice shall be published at least once in an official newspaper in said county at least ten days prior to the date fixed for said sale. The sheriff or his deputy shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. The moneys arising from such sale shall be turned over to the county auditor acting as trustee: *Provided, however,* That the sheriff shall first deduct the costs and expenses of the sale from the moneys and shall apply such moneys to pay said costs and expenses.

The court order shall provide that the assets remaining in the hands of the trustee shall be transferred to any school district, districts, or portions of districts, lying within the dissolved port district boundaries. The transfer of assets shall be prorated to the districts based on the assessed valuation of said districts.

(2) If the debts exceed the assets of the port district, then the court shall appoint the auditor of the county in which a port district is located to be trustee of the port's assets for the purpose of conserving the same and of paying liability of the port district as funds become available therefor. The trustee shall be empowered to generally manage, wind up, and liquidate the affairs of such district in such manner as the court shall provide and to file his accounting with the court within ninety days from the date of his appointment and as often thereafter as the court shall provide. The board of county commissioners, acting as pro tempore port district commissioners under the authority of RCW 53.36-.020 shall levy an annual tax not exceeding forty-five cents per thousand dollars of assessed value or such lesser amount as may previously have been voted by the taxpayers within said district, together with an amount deemed necessary for payment of the costs and expenses attendant upon the dissolution of said district, upon all the taxable property within said district, the amount of such levy to be determined from time to time by the court. When, as shown by the final accounting of the trustee, all of the indebtedness of the district shall have been satisfied, the cost and expense of the proceeding paid or provided for, and the affairs of the district wound up, the court shall declare the district dissolved: *Provided,* That if the indebtedness be composed in whole or in part of bonded debt for which a regular program of retirement has been provided, then the board of county commissioners shall be directed by the court to continue to make such annual levies as are required for the purpose of debt service upon said bonded debt. [1973 1st ex.s. c 195 § 59; 1971 ex.s. c 162 § 4.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

53.47.050 Effect of final order of dissolution. Upon the entry of the final order of dissolution declaring the port district dissolved all offices of the port district shall be deemed abolished, and no other or further levy shall

be certified by the county commissioners except pursuant to the directive of the court as hereinabove provided. [1971 ex.s. c 162 § 5.]

53.47.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other remedy. [1971 ex.s. c 162 § 6.]

**Chapter 53.48
DISSOLUTION OF PORT AND OTHER
DISTRICTS**

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Dissolution of
air pollution control districts: RCW 70.94.260.
cemetery districts: RCW 68.16.240.
depopulated school districts: RCW 28A.57.200.
diking districts: RCW 85.07.020.
drainage districts: RCW 85.07.020.
fire protection districts, election method: RCW 52.04.155.
flood control districts: 1935 act—RCW 86.05.740; 1937 act—RCW 86.09.622, 86.09.625.
irrigation districts: Chapters 87.52, 87.53, 87.56 RCW.
metropolitan park districts: RCW 35.61.310.
sewer districts: RCW 56.04.090.
soil conservation districts: RCW 89.08.350 through 89.08.380.
water districts, election method: RCW 57.04.090, 57.04.100 and chapter 53.48 RCW.

53.48.010 Definitions. The following words and terms shall, whenever used in this chapter, have the meaning set forth in this section:

(1) The term "district" as used herein, shall include all municipal corporations having a governing body, other than cities, towns, counties, and townships, such as port, school, independent highway, water, fire protection, and all other districts of similar organization, but shall not include local improvement districts, diking, drainage and irrigation districts, nor public utility districts.

(2) The words "board of commissioners," as used herein, shall mean the governing authority of any district as defined in subdivision (1) of this section. [1941 c 87 § 1; Rem. Supp. 1941 § 8931-11.]

Purpose—1941 c 87: "This act is intended to authorize the dissolution of all types of municipal corporations having governing bodies, other than those excepted from the application of this act, in cases where the occasion or reason for continued existence of such corporation has ceased, or where the best interests of all persons concerned would be served by such dissolution, and shall be liberally construed to effect such intent." [1941 c 87 § 12.]

Severability—1941 c 87: "If any provision of this act or the application thereof to any person or circumstance 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." [1941 c 87 § 11.]

53.48.020 Petition. For the purpose of dissolution of a district, a petition for an order of dissolution signed by the majority of the board of commissioners, or other governing authority of such district shall be presented to the superior court of the county in which the board of commissioners is situated. [1941 c 87 § 2; Rem. Supp. 1941 § 8931-12.]

53.48.030 Order for hearing—Notice. Upon the filing of such petition for an order of dissolution, the superior court shall enter an order setting the same for hearing at a date not less than thirty days from the date of filing, and the clerk of the court of said county shall give notice of such hearing by publication in a newspaper of general circulation in the county in which the district is located once a week for three successive weeks, and by posting in three public places in the county in which the district is located at least twenty-one days before said hearing. At least one notice shall be posted in the district. The notices shall set forth the filing of the petition, its purpose and the date and place of the hearing thereon. [1941 c 87 § 3; Rem. Supp. 1941 § 8931-13.]

53.48.040 Order of dissolution—Sale of assets. After said hearing the court shall enter its order dissolving or refusing to dissolve said district. A finding that the best interests of all persons concerned will be served by the proposed dissolution shall be essential to an order of dissolution. If the court find that such district is solvent, the court shall order the sale of such assets, other than cash, by the sheriff of the county in which the board is situated, in the manner provided by law for the sale of property on execution. [1941 c 87 § 4; Rem. Supp. 1941 § 8931-14.]

Execution: Chapter 6.04 RCW.

53.48.050 Payment of debts and costs—Balance to school district. The proceeds of the sale, together with moneys on hand in the treasury of the district, shall after payment of all costs and expenses, be paid to the treasurer of the same county and placed to the credit of the school district, or districts, in which such district is situated. [1941 c 87 § 5; Rem. Supp. 1941 § 8931-15.]

Port districts in counties of sixth class—Disposition of funds: Chapter 53.49 RCW.

53.48.060 Insolvency—Second hearing. Upon a finding of insolvency the court shall then determine the indebtedness of the district, the creditors thereof and their claims. The court shall then set a date and a place for a second hearing, which hearing shall be not less than sixty days nor more than one hundred twenty days from the hearing as provided in RCW 53.48.030.

The purpose of such hearing shall be to determine ways and means of retiring the established indebtedness of the district and paying all costs and expenses of proceedings hereunder. Such ways and means may include

the levy of assessments against the property in the district as provided in RCW 53.48.080. [1941 c 87 § 6; Rem. Supp. 1941 § 8931-16.]

53.48.070 Notice of second hearing. The clerk shall give notice of the second hearing by publication in a newspaper of general circulation in the county in which the district is located once a week for three successive weeks, and by posting in three public places in the county in which the district is located at least twenty-one days before the hearing, and shall give such other notice to creditors and other interested parties as the court may deem necessary or advisable. At least one notice shall be posted in the district. The notices shall set forth the filing of the petition, its purpose, the finding of the court on the petition, the date and place of the second hearing and the purpose of the hearing as stated in RCW 53.48.060. [1941 c 87 § 7; Rem. Supp. 1941 § 8931-17.]

53.48.080 Sale of property—Levy to pay deficit. At the second hearing the court shall have authority to order the sale of any district property. If the proceeds of such sale together with any cash remaining on hand to the credit of the district are insufficient to retire such indebtedness together with all costs and expenses, the court shall have authority to order the board of commissioners to levy assessments in the manner provided by law against the property in the district in amounts sufficient to retire said indebtedness and pay the costs and expenses. At such hearing any property owner within the district may appear and be heard for or against such levy. [1941 c 87 § 8; Rem. Supp. 1941 § 8931-18.]

53.48.090 Order of dissolution or refusal. After the indebtedness of the district has been settled or paid, the court shall determine whether the best interests of all persons concerned will be served by the proposed dissolution and shall make a finding thereon. The court shall then enter its order dissolving or refusing to dissolve said district. [1941 c 87 § 9; Rem. Supp. 1941 § 8931-19.]

53.48.120 Provision for costs and expenses. In all proceedings brought under this chapter the court shall make provision for the costs and expenses of proceedings hereunder and for the payment of the same. [1941 c 87 § 10; Rem. Supp. 1941 § 8931-20.]

53.48.130 Commercial waterway district within city—Distribution of assets, etc., to city. In the event a commercial waterway district, seeking dissolution under this chapter, lies wholly or chiefly within the limits of a city, and the court finds that the city will continue to need the use of the river or stream included in the waterway district, or finds that the city needs protection from the waters of said stream or river, then the court, if it be satisfied after hearing that a need exists for the use, control, or navigation of said stream or river, and if further satisfied that any debts of the waterway district can be otherwise paid or liquidated with other assets of

the district under the powers of its commissioners, may distribute the land, improvements, and other assets, if any, made by said waterway district to said city, but if the court finds that distribution to the city would leave debts of the waterway district unpaid, then the court may order distribution to the city under such arrangements and terms as to the court may seem just and equitable. [1953 c 266 § 1.]

53.48.140 Dissolution of district which has no active commission—Powers of county commissioners. See RCW 53.46.060.

Chapter 53.49

DISPOSITION OF FUNDS ON DISSOLUTION OF CERTAIN DISTRICTS

Sections

- 53.49.010 Port districts in counties of sixth class—Disposition of funds.
53.49.020 Port districts in counties of sixth class—Order to transfer funds.

53.49.010 Port districts in counties of sixth class—Disposition of funds. Whenever any port district located in any county of the sixth class shall be dissolved and disestablished or is about to be dissolved and disestablished and any sums of money remain in any of its funds, the port commissioners are authorized and directed to apply by petition, which may be filed without fee, to the superior court of such county for an order authorizing the transfer of such funds to the school district fund or if there be more than one such district, the school district funds of all districts, which are located within the boundaries of such port district. [1943 c 282 § 1; Rem. Supp. 1943 § 9718–10. Formerly RCW 53.48.100.]

53.49.020 Port districts in counties of sixth class—Order to transfer funds. The superior court of any such county shall enter his order authorizing such transfer of funds if he is satisfied, after hearing the petition therefor, that the port district is dissolved and disestablished or is about to be dissolved and disestablished and that no obligations of the port district remain unpaid. The court shall equitably divide such sums of money between school districts if there be more than one district involved. [1943 c 282 § 2; Rem. Supp. 1943 § 9718–11. Formerly RCW 53.48.110.]

Chapter 53.54

AIRCRAFT NOISE ABATEMENT

Sections

- 53.54.010 Programs for abatement of aircraft noise authorized.
53.54.020 Investigation and monitoring of noise impact—Programs to conform to needs—"Impacted areas"
53.54.030 Authorized programs—When property deemed within impacted area.
53.54.040 Fund authorized—Sources.
53.54.900 Liberal construction—Powers additional.
53.54.910 Severability—1974 1st ex.s. c 121.

53.54.010 Programs for abatement of aircraft noise authorized. A port district operating an airport serving more than twenty scheduled jet aircraft flights per day may undertake any of the programs or combinations of such programs, as authorized by this chapter, for the purpose of alleviating and abating the impact of jet aircraft noise on areas surrounding such airport. [1974 1st ex.s. c 121 § 1.]

53.54.020 Investigation and monitoring of noise impact—Programs to conform to needs—"Impacted areas". Prior to initiating programs as authorized in this chapter the port commission shall undertake the investigation and monitoring of aircraft noise impact to determine the nature and extent of the impact. The port commission shall adopt a program of noise impact abatement based upon the investigations and as amended periodically to conform to needs demonstrated by the monitoring programs: *Provided*, That in no case may the port district undertake any of the programs of this chapter in an area which is more than three miles beyond the paved end of any runway or more than fifteen hundred feet from the centerline of any runway or from an imaginary runway centerline extending three miles from the paved end of such runway: *Provided further*, That the area within twenty-five hundred feet of the center of the end point of any runway may be included. Such areas as determined above, shall be known as "impacted areas". [1974 1st ex.s. c 121 § 2.]

53.54.030 Authorized programs—When property deemed within impacted area. For the purposes of this chapter, in developing a remedial program, the port commission may utilize one or more of the following programs:

(1) Acquisition of property or property rights within the impacted area, which shall be deemed necessary to accomplish a port purpose. The port district may purchase such property or property rights by time payment notwithstanding the time limitations provided for in RCW 53.08.010. The port district may mortgage or otherwise pledge any such properties acquired to secure such transactions. The port district may assume any outstanding mortgages.

(2) Programs of soundproofing structures located within an impacted area. Such programs may be executed without regard to the ownership, provided the owner waives all damages and conveys a full and unrestricted easement for the operation of all aircraft, and for all noise and noise associated conditions therewith, to the port district.

(3) Mortgage insurance of private owners of lands or improvements within such noise impacted area where such private owners are unable to obtain mortgage insurance solely because of noise impact. In this regard, the port district may establish reasonable regulations and may impose reasonable conditions and charges upon the granting of such mortgage insurance: *Provided*, That such fees and charges shall at no time exceed fees established for federal mortgage insurance programs for like service.

(4) Management of all lands, easements, or development rights acquired, including but not limited to the following:

(a) Rental of any or all lands or structures acquired;

(b) Redevelopment of any such lands for any economic use consistent with airport operations, local zoning and the state environmental policy;

(c) Sale of such properties for cash or for time payment and subjection of such property to mortgage or other security transaction: *Provided*, That any such sale shall reserve to the port district by covenant an unconditional right of easement for the operation of all aircraft and for all noise or noise conditions associated therewith.

(5) A property shall be considered within the impacted area if any part thereof is within the impacted area. [1974 1st ex.s. c 121 § 3.]

53.54.040 Fund authorized—Sources. A port district may establish a fund to be utilized in effectuating the intent of this chapter. The port district may finance such fund by: The proceeds of any grants or loans made by federal agencies; rentals, charges and other revenues as may be generated by programs authorized by this chapter, airport revenues; and revenue bonds based upon such revenues. The port district may also finance such fund, as necessary, in whole or in part, with the proceeds of general obligation bond issues of not more than one-eighth of one percent of the value of taxable property in the port district: *Provided*, That any such bond issue shall be in addition to bonds authorized by RCW 53.36.030: *Provided further*, That any such general obligation bond issue may be subject to referendum by petition as provided by county charter, the same as if it were a county ordinance. [1974 1st ex.s. c 121 § 4.]

53.54.900 Liberal construction—Powers additional. The rule of strict construction shall have no application to this chapter, which shall be liberally construed to carry out the purposes and objects for which this chapter is intended. The powers granted in this chapter shall be in addition to all others granted to port districts. [1974 1st ex.s. c 121 § 5.]

53.54.910 Severability—1974 1st ex.s. c 121. If any provision of this 1974 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 shall not be affected. [1974 1st ex.s. c 121 § 7.]